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RECORDATION NO. _____ Filed & Recorded

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INTERSTATE COMMERCE COMMISSION

THE CANADA TRUST COMPANY,

Owner-Trustee

8½% Equipment Trust Certificates

Due 1992

Equipment Trust Agreement

Dated as of December 31, 1971

by and between

CANADA PERMANENT TRUST COMPANY,

Trustee

and

THE CANADA TRUST COMPANY,

Owner-Trustee

EQUIPMENT TRUST AGREEMENT dated as of December 31, 1971, between CANADA PERMANENT TRUST COMPANY, a trust company subject to the jurisdiction of the Parliament of Canada, as Trustee (hereinafter called the Trustee), and THE CANADA TRUST COMPANY, a trust company incorporated under the laws of Canada, as Owner-Trustee (hereinafter called the Company) under a Trust Agreement dated as of December 31, 1971, with First Security Bank of Idaho, National Association (hereinafter called the Owner Trust Agreement).

WHEREAS, the Company has agreed to cause the sale, assignment and transfer to the Trustee of title to the railroad equipment described in Schedule I hereto, subject to the provisions hereof, which equipment is to be manufactured and sold pursuant to the Manufacturing Agreement to be dated as of December 31, 1971 (hereinafter called the Manufacturing Agreement) among the Company, National Steel Car Corporation, Limited, (hereinafter called the Manufacturer) and Canadian National Railway Company (hereinafter called the Lessee), the Manufacturing Agreement to be substantially in the form of Annex A hereto; and

WHEREAS, title to such railroad equipment is to be retained by the Trustee and such railroad equipment is to be leased by the Trustee to the Company hereunder until transferred by the Trustee to the Company under the provisions hereof; and

WHEREAS, the Company proposes to enter into a Lease of Equipment to be dated as of December 31, 1971 (hereinafter called the Lease), with the Lessee, substantially in the form of Annex B hereto, pursuant to which the Company will lease such railroad equipment to the Lessee, and such Lease of Equipment is to be assigned to the Trustee pursuant to the Assignment (as hereinafter defined); and

WHEREAS, The Canada Trust Company, Owner-Trustee, 8½% Equipment Trust Certificates, Due 1992 (hereinafter called the Trust Certificates), are to be issued and sold, and the proceeds of such sale are to be held in trust by the Trustee and are to constitute a fund to be known as THE CANADA TRUST COMPANY, OWNER-TRUSTEE, EQUIPMENT TRUST, DUE 1992, to be applied by the Trustee as provided herein; and

WHEREAS, the text of the Trust Certificates is to be substantially in the following form:

[FORM OF TRUST CERTIFICATE]

\$.....

No.....

THE CANADA TRUST COMPANY
AS OWNER-TRUSTEE

8½% EQUIPMENT TRUST CERTIFICATE
DUE 1992

Canada Permanent Trust Company, as Trustee (hereinafter called the Trustee) under an Equipment Trust Agreement dated as of December 31, 1971 (hereinafter called the Agreement), between the Trustee and The Canada Trust Company, a trust company incorporated under the laws of Canada, as Owner-Trustee (hereinafter called the Company), certifies that

or registered
assigns is entitled to an interest of \$ (Canadian) in the
The Canada Trust Company, Owner-Trustee, Equipment Trust, Due 1992, due
and payable on or before July 1, 1992, in instalments as hereinafter provided,
and to interest on the amount of unpaid principal from time to time owing
pursuant to this Certificate, due and payable quarterly on January 1, April 1,
July 1 and October 1 in each year commencing April 1, 1972, at the rate of
8½% per annum from the date hereof until such principal amount becomes
due and payable, with interest on any overdue principal and interest, to
the extent legally enforceable, at the rate of 8½% per annum. Payments of
principal and interest shall be made to the registered holder at the principal
office of the Trustee in Toronto, Ontario, Canada, in lawful money of Canada.
Each of such payments shall be made only from and out of rentals or other
moneys received by the Trustee and applicable to such payment under the
provisions of the Agreement or under the provisions of an Assignment of Lease
and Agreement dated as of December 31, 1971, between the Company and the
Trustee. The liability of the Company for all payments to be made by it to
the Trustee under the Agreement is limited by Section 4.03 of the Agreement.
The principal amount of the Trust Certificates is due and payable in 48 quar-
terly instalments of principal payable on January 1, April 1, July 1 and October
1 of each year, commencing October 1, 1980, calculated as provided in the
Agreement so that the aggregate of the principal and interest payable on each
such date shall be substantially equal. Interest shall be computed hereunder on
the basis of a 360-day year of twelve 30-day months. **Since partial payments
of principal on this Certificate are not required to be noted on this
Certificate, inquiry should be made at said office of the Trustee as to
the principal amount at any time remaining unpaid hereon.**

This Certificate is one of an authorized issue of Trust Certificates in an
aggregate principal amount not exceeding \$3,750,000 (Canadian) and issued or

to be issued under the Agreement, under which title to certain railroad equipment (or cash or obligations defined in the Agreement as "Investments" in lieu thereof, as provided in the Agreement) and the above-mentioned Assignment of Lease and Agreement are held by the Trustee in trust for the equal and ratable benefit of the holders of the Trust Certificates issued thereunder. Reference is made to the Agreement and the Schedule and Annexes thereto (copies of which are on file with the Trustee at its said office) for a more complete statement of the terms and provisions thereof, to all of which the registered holder hereof, by accepting this Certificate, assents.

The transfer of this Certificate in whole or in part may be registered upon the terms and conditions set forth in the Agreement on the books of the Trustee upon surrender to the Trustee at said office of the Trustee of this Certificate accompanied by a written instrument of transfer, duly executed by the registered holder in person or by duly authorized attorney, in form satisfactory to the Trustee. The Trustee and the Company may deem and treat the person in whose name this Certificate is registered as the absolute owner hereof for the purpose of receiving payment of principal and interest and for all other purposes and shall not be affected by any notice to the contrary.

In case of the happening of an Event of Default (as defined in the Agreement) all instalments of principal and interest represented by this Certificate may become or be declared due and payable in the manner and with the effect provided in the Agreement.

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be signed by one of its Vice Presidents or Assistant Vice Presidents, by his signature or a facsimile thereof, and its corporate seal or a facsimile thereof to be hereunto affixed or hereon imprinted and to be attested by the manual signature of an Authorized Officer.

Dated as of

CANADA PERMANENT TRUST COMPANY,
Trustee

by.....
Vice-President

Attest:

.....
Authorized Officer

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

Please insert Social Security or other identifying number of Assignee

.....
the within The Canada Trust Company, Owner-Trustee, 8½% Equipment Trust Certificate and does hereby irrevocably constitute and appoint.....
.....attorney to transfer the said Certificate on the books of the within named Trustee, with full powers of substitution in the premises.

Dated.....

WHEREAS, it is desired to secure for the holders of the Trust Certificates the payment of the principal thereof with interest thereon, as hereinafter provided, and to evidence the rights of the holder or holders of the Trust Certificates in substantially the form hereinbefore set forth;

Now, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereto hereby agree as follows:

ARTICLE ONE

DEFINITIONS

SECTION 1.01. *Definitions.* The following terms (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this Agreement shall have the respective meanings hereinafter specified:

Affiliate of any corporation shall mean any corporation which, directly or indirectly, controls or is controlled by, or is under common control with, such corporation. For the purposes of this definition, *control* (including *controlled by* and *under common control with*), as used with respect to any corporation, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise.

Assignment shall mean the Assignment of Lease and Agreement dated as of December 31, 1971, by the Company to the Trustee substantially in the form of Annex C hereto.

of the surrendered Trust Certificate or Certificates or by duly authorized attorney, in form satisfactory to the Trustee; *provided, however*, that no Trust Certificate shall be issued in a principal amount less than \$10,000 except in the case of the transfer or exchange of a Trust Certificate which at the time is in an unpaid principal amount of less than \$10,000; each Trust Certificate shall be dated as of the date of issue unless issued in exchange for another Trust Certificate or Certificates bearing unpaid interest from an earlier date, in which case they shall be dated as of such earlier date; and each Trust Certificate shall entitle the registered holder to interest from the date thereof. The Trustee shall, if any prepayment shall theretofore have been made pursuant to Section 3.01 or 4.07, attach to each Trust Certificate issued upon registration of transfer or exchange a revised schedule of payments of principal and interest as provided in Section 3.01 and 4.07.

(b) Anything contained herein to the contrary notwithstanding, the parties hereto may deem and treat the registered holder of any Trust Certificate as the absolute owner of such Trust Certificate for all purposes and shall not be affected by any notice to the contrary.

(c) The Trustee shall cause to be kept at the Corporate Trust Office books for the registration and registration of transfer of the Trust Certificates and, upon presentation of the Trust Certificates for such purpose, the Trustee shall register any transfer as hereinabove provided, and under such reasonable regulations as it may prescribe.

(d) For any registration, registration of transfer or exchange, the Trustee shall require payment by the person requesting same of a sum sufficient to reimburse it for any governmental charge connected therewith.

(e) Each Trust Certificate delivered pursuant to any provision of this Agreement in exchange for, or upon the registration of transfer of the whole or any part, as the case may be, of one or more other Trust Certificates, shall carry all the rights to principal and to interest accrued and unpaid and to accrue, which were carried by the whole or such part, as the case may be, of such one or more other Trust Certificates, and, notwithstanding anything contained in this Agreement, the Trust Certificates shall be so dated that neither gain nor loss in interest or principal shall result from such exchange, substitution or registration of transfer.

(f) The Trustee shall not be required to issue, register the transfer of or exchange any Trust Certificates for a period of ten Business Days next preceding any interest payment date.

SECTION 2.06. *Replacement of Lost Trust Certificates.* In case any Trust Certificate shall become mutilated or defaced or be lost, destroyed or stolen, then on the terms herein set forth, and not otherwise, the Trustee shall execute

and deliver a new Trust Certificate of like tenor and date, and bearing such identifying number or designation as the Trustee may determine, in exchange and substitution for, and upon cancellation of, the mutilated or defaced Trust Certificate, or in lieu of and in substitution for the same if lost, destroyed or stolen. The applicant for a new Trust Certificate pursuant to this Section shall furnish to the Trustee and to the Company evidence to their satisfaction of the loss, destruction or theft of such Trust Certificate alleged to have been lost, destroyed or stolen and of the ownership and authenticity of such mutilated, defaced, lost, destroyed or stolen Trust Certificate, and also shall furnish a letter of indemnity in the case of any Purchaser or, if other than a Purchaser, such security or indemnity as may be required by the Trustee and by the Company in their discretion, and shall pay all expenses and charges of such substitution or exchange. All Trust Certificates are held and owned upon the express condition that the foregoing provisions, to the extent permitted by law, are exclusive in respect of the replacement of mutilated, defaced, lost, destroyed or stolen Trust Certificates and shall preclude any and all other rights and remedies, any law or statute now existing or hereafter enacted to the contrary notwithstanding.

ARTICLE THREE

ACQUISITION OF TRUST EQUIPMENT BY TRUSTEE; DEPOSITED CASH

SECTION 3.01. *Acquisition and Exclusion of Equipment; Prepayment of Deposited Cash.* The Company shall cause the sale, assignment and transfer from the Manufacturer to the Trustee, as Trustee for the holders of the Trust Certificates, of title to all the Trust Equipment described in Schedule I hereto; *provided, however*, that any Equipment not accepted pursuant to Section 4.02 and settled for pursuant to this Article Three on or before May 1, 1972 (herein called the Cut-Off Date), shall be excluded from this Agreement and not included in the term Trust Equipment. In the event of any such exclusion, the Company and the Trustee shall execute an agreement supplemental hereto limiting the Agreement to the Trust Equipment theretofore accepted and settled for hereunder.

In the event that it is anticipated that on the Cut-Off Date any Deposited Cash shall remain in the possession of the Trustee, the Trustee shall so notify each holder of Certificates to whom a prepayment is to be made as provided below at least five Business Days preceding the Cut-Off Date, and, on the Cut-Off Date, shall (a) sell all Investments then held by it as soon as practicable and (b) apply Deposited Cash to the *pro rata* prepayment, by cheque drawn on a Canadian chartered bank, of each instalment of principal remaining unpaid on the Trust Certificates (in proportion to the principal amount represented by each such instalment), each of the holders of the Trust Certificates to share proportionately in such prepayment. Thereupon the Company will promptly

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furnish to the Trustee and each of the holders of outstanding Trust Certificates so prepaid a revised schedule of payments of principal thereafter to be made hereunder calculated as provided in Section 2.02.

SECTION 3.02. *Payment of Deposited Cash.* From time to time, when and as any of the Equipment shall have become subject to the terms and provisions hereof as provided in Section 4.02, the Trustee shall upon Request (subject to the provisions of Section 3.04 and the Company's making payment as contemplated by the provisions of Section 3.03) pay to the Manufacturer out of Deposited Cash then held by the Trustee an amount not in excess of 80% of the aggregate Cost of such Trust Equipment, as specified in the certificate furnished to the Trustee pursuant to Section 3.04(b). Anything contained in this Agreement to the contrary notwithstanding, the Trustee shall have no duty to make any payment to the Manufacturer pursuant to this Section: (i) prior to each Closing Date (as defined in the Purchase Agreement) or (ii) in the event that on such Closing Date the aggregate principal amount of Trust Certificates to be sold on such Closing Date shall not have been purchased by the Purchasers or (iii) in the event that the Company shall have failed to pay to the Trustee the monies required to be paid by the Company to the Trustee under Section 3.03 hereof.

SECTION 3.03. *Payment of Deficiency.* The Company covenants that, contemporaneously with any payment by the Trustee pursuant to Section 3.02 hereof with respect to any Trust Equipment, but subject to the provisions of Article 4 of the Manufacturing Agreement, it will pay to the Trustee as advance rental that portion of the Cost of the delivered Trust Equipment not paid out of Deposited Cash as provided for in Section 3.02 hereof. Thereupon, the Trustee shall upon Request, pay to the Manufacturer by the use of such advance rental, the portion of the Cost of the delivered Trust Equipment not paid out of Deposited Cash as provided for in Section 3.02 hereof. It is understood and agreed, however, that, as provided in Article 3 of the Manufacturing Agreement, unless the Company shall otherwise agree the total Cost of the Trust Equipment shall not exceed \$4,708,500 (Canadian).

SECTION 3.04. *Supporting Papers.* The Trustee shall not pay out any Deposited Cash pursuant to Section 3.02 with respect to any Trust Equipment unless the Trustee and the Company shall have received, in form and substance satisfactory to them and their counsel:

(a) one or more duly executed Certificates of Acceptance (as defined in the Lease) with respect to such Trust Equipment stating that the Trust Equipment described and specified therein by number or numbers has been delivered and has been marked in accordance with the provisions of Section 4.06 hereof;

(b) an invoice or invoices from the Manufacturer and a Lessee's Certificate which shall state that such Trust Equipment is Equipment as

herein defined (having been first put into service no earlier than the date of delivery to and acceptance by the Lessee, as agent for the Trustee) and that an amount specified therein is the actual Cost in Canadian dollars of such Trust Equipment;

(c) a bill or bills of sale of such Trust Equipment from the Manufacturer to the Trustee, which bill or bills of sale shall contain (i) a warranty or guaranty to the Trustee and to the Company that at the time of sale the Manufacturer had legal title to the Trust Equipment described therein and good and lawful right to sell such Trust Equipment and that the title to such Trust Equipment is free from all claims, liens, security interests and other encumbrances of any nature except as created by this Agreement or as permitted by Section 6.01 hereof and except for the rights of the Lessee under the Lease and (ii) a warranty to the Trustee and the Company of the materials and workmanship with respect to the Trust Equipment as set forth in Item 3 of Schedule I to the Manufacturing Agreement;

(d) an opinion of counsel for the Manufacturer, dated the date of such payment of Deposited Cash, to the effect (i) that such bill or bills of sale have been duly authorized, executed and delivered and are valid and effective to transfer to the Trustee title to the Trust Equipment described therein free from all claims, liens, security interests and other encumbrances except as created by this Agreement or as permitted by Section 6.01 hereof and except for the rights of the Company hereunder and of Lessee under the Lease and that, at the time of delivery of the Trust Equipment hereunder and under the Lease, the Manufacturer had good title thereto free from all liens, charges or other encumbrances except as created by this Agreement or as permitted by Section 6.01 hereof and except for the rights of the Company hereunder and of the Lessee under the Lease, (ii) that the Manufacturing Agreement has been duly authorized, executed, acknowledged and delivered by the Manufacturer and is a legal, valid and binding instrument enforceable against the Manufacturer in accordance with its terms (except as enforcement of the same may be limited by any applicable law, reorganization, insolvency, moratorium or other laws affecting the rights of creditors' rights generally from time to time in effect);

Addressed to the Trustee, of the opinions of counsel and (b) of the Purchase Agreement;

Lessee, dated the date of such payment to the effect set forth in the opinion of the Trustee and on the opinion of the Manufacturer;

ment.

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subject to the Lease,

of counsel for the Manufacturer

the opinion of counsel for the Company

of Paragraph 5 of the Purchase Agreement

therein;

provided that counsel for the Manufacturer in giving such opinion may rely as to matters of fact upon a certificate of two Senior Officers of the Manufacturer;

of the surrendered Trust Certificate or Certificates or by duly authorized attorney, in form satisfactory to the Trustee; *provided, however*, that no Trust Certificate shall be issued in a principal amount less than \$10,000 except in the case of the transfer or exchange of a Trust Certificate which at the time is in an unpaid principal amount of less than \$10,000; each Trust Certificate shall be dated as of the date of issue unless issued in exchange for another Trust Certificate or Certificates bearing unpaid interest from an earlier date, in which case they shall be dated as of such earlier date; and each Trust Certificate shall entitle the registered holder to interest from the date thereof. The Trustee shall, if any prepayment shall theretofore have been made pursuant to Section 3.01 or 4.07, attach to each Trust Certificate issued upon registration of transfer or exchange a revised schedule of payments of principal and interest as provided in Section 3.01 and 4.07.

(b) Anything contained herein to the contrary notwithstanding, the parties hereto may deem and treat the registered holder of any Trust Certificate as the absolute owner of such Trust Certificate for all purposes and shall not be affected by any notice to the contrary.

(c) The Trustee shall cause to be kept at the Corporate Trust Office books for the registration and registration of transfer of the Trust Certificates and, upon presentation of the Trust Certificates for such purpose, the Trustee shall register any transfer as hereinabove provided, and under such reasonable regulations as it may prescribe.

(d) For any registration, registration of transfer or exchange, the Trustee shall require payment by the person requesting same of a sum sufficient to reimburse it for any governmental charge connected therewith.

(e) Each Trust Certificate delivered pursuant to any provision of this Agreement in exchange for, or upon the registration of transfer of the whole or any part, as the case may be, of one or more other Trust Certificates, shall carry all the rights to principal and to interest accrued and unpaid and to accrue, which were carried by the whole or such part, as the case may be, of such one or more other Trust Certificates, and, notwithstanding anything contained in this Agreement, the Trust Certificates shall be so dated that neither gain nor loss in interest or principal shall result from such exchange, substitution or registration of transfer.

(f) The Trustee shall not be required to issue, register the transfer of or exchange any Trust Certificates for a period of ten Business Days next preceding any interest payment date.

SECTION 2.06. *Replacement of Lost Trust Certificates.* In case any Trust Certificate shall become mutilated or defaced or be lost, destroyed or stolen, then on the terms herein set forth, and not otherwise, the Trustee shall execute

and deliver a new Trust Certificate of like tenor and date, and bearing such identifying number or designation as the Trustee may determine, in exchange and substitution for, and upon cancellation of, the mutilated or defaced Trust Certificate, or in lieu of and in substitution for the same if lost, destroyed or stolen. The applicant for a new Trust Certificate pursuant to this Section shall furnish to the Trustee and to the Company evidence to their satisfaction of the loss, destruction or theft of such Trust Certificate alleged to have been lost, destroyed or stolen and of the ownership and authenticity of such mutilated, defaced, lost, destroyed or stolen Trust Certificate, and also shall furnish a letter of indemnity in the case of any Purchaser or, if other than a Purchaser, such security or indemnity as may be required by the Trustee and by the Company in their discretion, and shall pay all expenses and charges of such substitution or exchange. All Trust Certificates are held and owned upon the express condition that the foregoing provisions, to the extent permitted by law, are exclusive in respect of the replacement of mutilated, defaced, lost, destroyed or stolen Trust Certificates and shall preclude any and all other rights and remedies, any law or statute now existing or hereafter enacted to the contrary notwithstanding.

ARTICLE THREE

ACQUISITION OF TRUST EQUIPMENT BY TRUSTEE; DEPOSITED CASH

SECTION 3.01. *Acquisition and Exclusion of Equipment; Prepayment of Deposited Cash.* The Company shall cause the sale, assignment and transfer from the Manufacturer to the Trustee, as Trustee for the holders of the Trust Certificates, of title to all the Trust Equipment described in Schedule I hereto; *provided, however*, that any Equipment not accepted pursuant to Section 4.02 and settled for pursuant to this Article Three on or before May 1, 1972 (herein called the Cut-Off Date), shall be excluded from this Agreement and not included in the term Trust Equipment. In the event of any such exclusion, the Company and the Trustee shall execute an agreement supplemental hereto limiting the Agreement to the Trust Equipment theretofore accepted and settled for hereunder.

In the event that it is anticipated that on the Cut-Off Date any Deposited Cash shall remain in the possession of the Trustee, the Trustee shall so notify each holder of Certificates to whom a prepayment is to be made as provided below at least five Business Days preceding the Cut-Off Date, and, on the Cut-Off Date, shall (a) sell all Investments then held by it as soon as practicable and (b) apply Deposited Cash to the *pro rata* prepayment, by cheque drawn on a Canadian chartered bank, of each instalment of principal remaining unpaid on the Trust Certificates (in proportion to the principal amount represented by each such instalment), each of the holders of the Trust Certificates to share proportionately in such prepayment. Thereupon the Company will promptly

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furnish to the Trustee and each of the holders of outstanding Trust Certificates so prepaid a revised schedule of payments of principal thereafter to be made hereunder calculated as provided in Section 2.02.

SECTION 3.02. *Payment of Deposited Cash.* From time to time, when and as any of the Equipment shall have become subject to the terms and provisions hereof as provided in Section 4.02, the Trustee shall upon Request (subject to the provisions of Section 3.04 and the Company's making payment as contemplated by the provisions of Section 3.03) pay to the Manufacturer out of Deposited Cash then held by the Trustee an amount not in excess of 80% of the aggregate Cost of such Trust Equipment, as specified in the certificate furnished to the Trustee pursuant to Section 3.04(b). Anything contained in this Agreement to the contrary notwithstanding, the Trustee shall have no duty to make any payment to the Manufacturer pursuant to this Section: (i) prior to each Closing Date (as defined in the Purchase Agreement) or (ii) in the event that on such Closing Date the aggregate principal amount of Trust Certificates to be sold on such Closing Date shall not have been purchased by the Purchasers or (iii) in the event that the Company shall have failed to pay to the Trustee the monies required to be paid by the Company to the Trustee under Section 3.03 hereof.

SECTION 3.03. *Payment of Deficiency.* The Company covenants that, contemporaneously with any payment by the Trustee pursuant to Section 3.02 hereof with respect to any Trust Equipment, but subject to the provisions of Article 4 of the Manufacturing Agreement, it will pay to the Trustee as advance rental that portion of the Cost of the delivered Trust Equipment not paid out of Deposited Cash as provided for in Section 3.02 hereof. Thereupon, the Trustee shall upon Request, pay to the Manufacturer by the use of such advance rental, the portion of the Cost of the delivered Trust Equipment not paid out of Deposited Cash as provided for in Section 3.02 hereof. It is understood and agreed, however, that, as provided in Article 3 of the Manufacturing Agreement, unless the Company shall otherwise agree the total Cost of the Trust Equipment shall not exceed \$4,708,500 (Canadian).

SECTION 3.04. *Supporting Papers.* The Trustee shall not pay out any Deposited Cash pursuant to Section 3.02 with respect to any Trust Equipment unless the Trustee and the Company shall have received, in form and substance satisfactory to them and their counsel:

(a) one or more duly executed Certificates of Acceptance (as defined in the Lease) with respect to such Trust Equipment stating that the Trust Equipment described and specified therein by number or numbers has been delivered and has been marked in accordance with the provisions of Section 4.06 hereof;

(b) an invoice or invoices from the Manufacturer and a Lessee's Certificate which shall state that such Trust Equipment is Equipment as

herein defined (having been first put into service no earlier than the date of delivery to and acceptance by the Lessee, as agent for the Trustee) and that an amount specified therein is the actual Cost in Canadian dollars of such Trust Equipment;

(c) a bill or bills of sale of such Trust Equipment from the Manufacturer to the Trustee, which bill or bills of sale shall contain (i) a warranty or guaranty to the Trustee and to the Company that at the time of sale the Manufacturer had legal title to the Trust Equipment described therein and good and lawful right to sell such Trust Equipment and that the title to such Trust Equipment is free from all claims, liens, security interests and other encumbrances of any nature except as created by this Agreement or as permitted by Section 6.01 hereof and except for the rights of the Lessee under the Lease and (ii) a warranty to the Trustee and the Company of the materials and workmanship with respect to the Trust Equipment as set forth in Item 3 of Schedule I to the Manufacturing Agreement;

(d) an opinion of counsel for the Manufacturer, dated the date of such payment of Deposited Cash, to the effect (i) that such bill or bills of sale have been duly authorized, executed and delivered and are valid and effective to transfer to the Trustee title to the Trust Equipment described therein free from all claims, liens, security interests and other encumbrances except as created by this Agreement or as permitted by Section 6.01 hereof and except for the rights of the Company hereunder and of Lessee under the Lease and that, at the time of delivery of the Trust Equipment hereunder and under the Lease, the Manufacturer had good title thereto free from all liens, charges or other encumbrances except as created by this Agreement or as permitted by Section 6.01 hereof and except for the rights of the Company hereunder and of the Lessee under the Lease, (ii) that the Manufacturing Agreement has been duly authorized, executed, acknowledged and delivered by the Manufacturer and is a legal, valid and binding instrument enforceable against the Manufacturer in accordance with its terms (except as enforcement of the same may be limited by any applicable law, reorganization, insolvency, moratorium or other laws affecting the rights of creditors' rights generally from time to time in effect);

Addressed to the Trustee, of the opinions of counsel and (b) of the Purchase Agreement;

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therein;

provided that counsel for the Manufacturer in giving such opinion may rely as to matters of fact upon a certificate of two Senior Officers of the Manufacturer;

ARTICLE FOUR

LEASE OF TRUST EQUIPMENT TO THE COMPANY;
LIMITATION OF LIABILITY

SECTION 4.01. *Lease of Trust Equipment.* The Trustee does hereby agree to let and lease to the Company, from and after the date of acceptance thereof hereunder to July 1, 1992, each unit of the Trust Equipment.

SECTION 4.02. *Equipment Automatically Subjected.* As and when any Equipment shall from time to time be accepted by the Company under the Manufacturing Agreement as evidenced by a Lessee's Certificate referred to in Section 3.04(a) hereof, the same shall be deemed accepted hereunder and shall, *ipso facto* and without further instrument or lease or acceptance pass under and become subject to all the terms and provisions hereof.

SECTION 4.03. *General Limitation of Liability.* Notwithstanding any other provisions of this Agreement, including, without limitation, this Article Four and Articles Five and Six hereof, it is, understood and agreed by the Trustee on behalf of itself and the holders of the Trust Certificates that liability of the Company for all payments to be made by it under and pursuant to this Agreement (other than the payments called for by Section 3.03 hereof) shall not exceed an amount equal to the income and proceeds from the Trust Equipment. As used herein the term "income and proceeds from the Trust Equipment" shall mean (i) if an Event of Default (as defined in Section 5.01 hereof) shall have occurred and while it shall be continuing so much of the following amounts as are indefeasibly received by the Company at any time after any such Event of Default and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as hereinafter defined in Section 4.07 hereof) paid for or with respect to the Trust Equipment pursuant to the Lease, (b) any and all payments or proceeds received by the Company pursuant to clause (i) of subparagraph (b) of § 9 of the Lease or for or with respect to the Trust Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition and (c) all amounts received by the Company pursuant to § 18 of the Lease; and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a), (b) and (c) or otherwise payable to the Company pursuant to the Lease as are indefeasibly received by the Company and as shall equal the rental payments specified in Section 4.04 due and payable by the Company on the date (or the next succeeding Business Day) such amounts received by the Company were required to be paid to it pursuant to the Lease or as shall equal any other payment (including payments in respect of Casualty Occurrences) then due and payable under this Agreement; it being understood that "income and proceeds from the Trust Equipment" shall in no event include amounts referred to in the foregoing clauses (a), (b) and (c) which were received by the Company prior to

the existence of such an Event of Default which exceeded the amounts required to make the rental payments specified in the first paragraph of Section 4.04 due and payable by the Company on the date (or the next succeeding Business Day) on which amounts with respect thereto received by the Company were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. The Trustee agrees on behalf of the holders of the Trust Certificates, that it will not seek to obtain a judgment against the Company for an amount in excess of the amounts payable by the Company pursuant to the limitations set forth in this paragraph, and that if it does obtain such a judgment, it will, accordingly, limit its execution of such judgment to such amount except as provided in the next succeeding sentence. Subject to the first sentence of Section 5.02 hereof, it is further specifically understood and agreed that nothing contained herein limiting the liability of the Company shall derogate from the right of the Trustee to proceed against the Trust Equipment as provided for herein or against the Lessee under the Lease, the Assignment or the Consent (to the extent permitted by the Lease, the Assignment or the Consent) for the full unpaid principal amount of the Trust Certificates and interest thereon and all other payments due under this Agreement.

SECTION 4.04. *Rental Payments.* The Company hereby accepts the lease of all the Trust Equipment; and the Company covenants and agrees to pay to the Trustee at the Corporate Trust Office (or, in the case of taxes, to the proper taxing authority), in lawful money of Canada, rental hereunder (in addition to the advance rental required to be paid by it under Section 3.03 hereof) which shall be sufficient to pay and discharge the following items, when and as the same shall become due and payable (whether or not any of such items shall become due and payable prior to the delivery and lease to the Company of any of the Trust Equipment and notwithstanding that any of the Trust Certificates shall have been acquired by the Company or any Affiliate of the Company or shall not have been presented for payment):

(1) from time to time upon demand of the Trustee an amount equal to (a) any expenses incurred in connection with any purchase, sale or redemption by the Trustee of Investments and (b) any loss of principal (including interest accrued thereupon at the time of purchase) incurred in connection therewith;

(2) from time to time upon demand of the Trustee any and all taxes, assessments and governmental charges upon or on account of the income or property of the trust, or upon or on account of this Agreement, which the Trustee as such may be required to pay;

(3) (a) the amounts of the interest payable on the Trust Certificates, when and as the same shall become due and payable (including interest on any prepayments of principal), and (b) interest, at the rate of 8½% per

annum from the due date, upon the amount of any instalments of interest or principal payable under this and the following subparagraph which shall not be paid when due, to the extent legally enforceable; and

(4) the instalments of principal on the Trust Certificates when and as the same shall become due and payable (whether upon the date of maturity thereof or by declaration or otherwise).

Nothing herein or in the Trust Certificates contained shall be deemed to impose on the Trustee or on the Company any obligation to pay to the holder of any Trust Certificate any tax, assessment or governmental charge required by any present or future law of Canada or of any Province, Territory, or other taxing authority thereof to be paid in behalf of, or withheld from the amount payable to, the holder of any Trust Certificate. The Company shall not be required to pay any tax, assessment or governmental charge pursuant to subparagraph (3) of this Section 4.04 so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof, unless in the judgment of the Trustee the rights or interests of the Trustee or of the holders of the Trust Certificates may be materially endangered thereby.

SECTION 4.05. *Termination of Lease.* After all payments due or to become due from the Company hereunder shall have been completed and fully made to or for the account of the Trustee and the Company shall have performed all of its other obligations hereunder, (1) any moneys remaining in the hands of the Trustee after providing for all outstanding Trust Certificates and after paying the expenses of the Trustee shall be paid to the Company, (2) title to all the Trust Equipment shall be transferred to the Company and (3) the Trustee shall execute for record in public offices, at the expense of the Company, such instrument or instruments in writing as reasonably shall be requested by the Company in order to make clear upon public records the Company's full title to all the Trust Equipment and the Company's full right, title and interest as Lessor under the Lease under the laws of any jurisdiction.

SECTION 4.06. *Marking of Trust Equipment.* The Company agrees that it will cause each unit of the Trust Equipment to be kept numbered with the identifying number set forth in Schedule I hereto and will keep and maintain plainly, distinctly, permanently and conspicuously marked on each side of such unit in letters not less than one inch in height, the following words:

"OWNED BY CANADA PERMANENT TRUST COMPANY, 320 BAY STREET, TORONTO, ONTARIO, CANADA, AS TRUSTEE UNDER THE TERMS OF AN EQUIPMENT TRUST AGREEMENT"

or other appropriate words designated by the Trustee, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the interests of the Trustee in such unit and the rights of the Trustee under this Agreement. The Company will not place or permit any unit

of the Trust Equipment to be placed in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace or cause to be replaced promptly any such words which may be removed, defaced or destroyed. The Company will not permit the identifying number of any unit of the Trust Equipment to be changed except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Trustee by the Company and filed, recorded or deposited in all public offices where this Agreement will have been filed, recorded or deposited.

Except as above provided, the Company will not allow the name of any person, association or corporation to be placed on the units of the Trust Equipment as a designation that might be interpreted as a claim of full legal ownership; *provided, however*, that the Company may cause the Trust Equipment to be lettered with the names, initials or other insignia customarily used by the Lessee on railroad equipment used by it of the same or a similar type for convenience of identification of its right to use the Trust Equipment under the Lease, and the Trust Equipment may be lettered in an appropriate manner for convenience of identification of the interest of the Company therein.

SECTION 4.07. *Maintenance of Trust Equipment; Casualty Occurrences; Annual Report.* The Company agrees that it will maintain or cause to be maintained and keep or cause to be kept all the Trust Equipment in good order and repair at no cost or expense to the Trustee, unless and until it becomes worn out, lost, stolen, completely destroyed or damaged beyond economic repair, from any cause whatsoever or taken or requisitioned by condemnation or otherwise (any such occurrence being hereinafter called a Casualty Occurrence).

Whenever any unit of the Trust Equipment shall suffer a Casualty Occurrence the Company shall, promptly after it is informed of a Casualty Occurrence under the Lease, notify the Trustee in writing with respect thereto. On the January 1, April 1, July 1 or October 1 next succeeding such notice by the Company (or, at the option of the Company, in the event such January 1, April 1, July 1 or October 1 shall occur within 15 days after notice of such Casualty Occurrence is given by the Company or the Lessee to the Trustee, on the following January 1, April 1, July 1 or October 1) the Company shall deposit with the Trustee an amount in cash equal to the value of such unit as of such January 1, April 1, July 1 or October 1 and, upon such payment, title to such unit shall be transferred to the Company. The rights and remedies of the Trustee to enforce or to recover any of the rental payments which are payable on such January 1, April 1, July 1 or October 1 with respect to such unit shall not be affected by reason of such Casualty Occurrence. For all purposes of this paragraph, value shall be set forth in an Officer's Certificate and shall be determined as follows and the manner of such determination shall be set forth in such Officer's Certificate:

The value of any unit of Trust Equipment having suffered a Casualty Occurrence shall be deemed to be ^{100%}~~80%~~ of the Cost thereof as theretofore certified to the Trustee, less an amount equal to the aggregate of payments of rental theretofore made pursuant to Section 4.04(4) applicable to such unit. Rentals paid pursuant to Section 4.04(4) shall be deemed to be applied *pro rata* to each unit on each Payment Date in the same proportion as the Cost of such unit bears to the aggregate Cost of all units of Trust Equipment hereunder on such date.

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Cash deposited with the Trustee pursuant to this Section 4.07 shall be applied to the *pro rata* prepayment on such date of each instalment of principal remaining unpaid on the Trust Certificates (in proportion to the principal amount represented by each such instalment), each of the holders of the Trust Certificates to share proportionately in such prepayment. The Company will promptly furnish to the Trustee and each of the holders of outstanding Trust Certificates a revised schedule of payments of principal thereafter to be made calculated as provided in Section 2.02.

On or before April 1 in each year, commencing with the year 1973, the Company will furnish or cause to be furnished to the Trustee, in such number of counterparts or copies as may reasonably be requested, an accurate statement (1) showing as of the preceding December 31, the amount, description and numbers of all units of the Trust Equipment that may have suffered a Casualty Occurrence whether by accident or otherwise during the preceding calendar year (or since the date of this Agreement in the case of the first such statement), and such other information regarding the condition and state of repair of Trust Equipment as the Trustee may reasonably request, (2) identifying the units of Trust Equipment then subject to the Lease, and (3) stating that, in the case of all units of Trust Equipment repaired or repainted during the period covered by such statement, the markings required by Section 4.06 have been preserved or replaced.

SECTION 4.08. *Possession of Trust Equipment.* So long as the Company shall not be in default under this Agreement, the Company shall be entitled to the possession and use of the Trust Equipment and also to enter into the Lease which shall be subject and subordinate to this Agreement and to permit the Trust Equipment to be used as provided therein; *provided, however*, that the Lease shall forthwith be assigned to the Trustee as security for the obligations of the Company hereunder pursuant to the Assignment.

The Company may not assign and/or transfer any or all of its rights under this Agreement and/or any or all of its rights to any of the Trust Equipment to any person, nor may the Company amend the Owner Trust Agreement, without the consent of all holders of the Trust Certificates.

SECTION 4.09. *Compliance With Laws and Rules; Additions; Indemnity.*

The Company covenants and agrees to comply in all respects with all laws of the jurisdictions in which operations involving any unit of the Trust Equipment may extend, with the Interchange Rules of the Association of American Railroads, if applicable, and with all lawful rules of any legislative, executive, administrative or judicial body or officer exercising any power or jurisdiction over any unit of the Trust Equipment, to the extent such laws and rules affect the operations or use of such unit; and the Company agrees to cause to be indemnified and held harmless the Trustee from any and all liabilities that may arise from any infringement or violation of any such laws or rules by the Company, or the Company's employees, or any other person. In the event that such laws or rules require the alteration of any such unit of the Trust Equipment, the Company will cause such unit to be conformed therewith and will cause the same to be maintained in proper condition or operation under such laws and rules; *provided, however*, that the Company or the Lessee may in good faith contest the validity or application of any such law or rule, in any reasonable manner which does not in the opinion of the Trustee adversely affect the property or rights of the Trustee or of the holders of the Trust Certificates hereunder.

Any and all additions to any unit of the Trust Equipment and any and all parts installed on or replacements made thereto by the Company or the Lessee shall constitute accessions to such unit (except such accessions other than those added or made to comply with the first paragraph of this Section 4.09, as can be removed without damage to, and without impairing the originally intended function or use of, such unit, and, without cost or expense to the Trustee) and the same shall immediately be vested in the Trustee.

The Company agrees to cause to be indemnified and held harmless the Trustee against any charge or claim made against the Trustee, and against any expense, loss or liability (including but not limited to counsel fees and expenses, patent liabilities, penalties and interest) which the Trustee may incur in any manner by reason of issuing the Trust Certificates or of entering into or performing this Agreement or any of the instruments referred to herein or contemplated hereby or which may arise in any manner out of the ownership of any unit of the Trust Equipment while subject to this Agreement, and to cause to be indemnified and held harmless the Trustee against any charge, claim, expense, loss or liability on account of any accident in connection with the operation, use, condition, possession or storage of such unit of the Trust Equipment resulting in damage to property or injury or death to any person. The indemnities contained in this paragraph shall survive payment of all other obligations under this Agreement or the termination of this Agreement.

SECTION 4.10. *Taxes.* All payments to be made by the Company hereunder will be free of expense to the Trustee for collection or other charges and will be free of expense to the Trustee with respect to the amount of any local,

state, provincial or federal Canadian or United States or Mexican taxes (other than net income, gross receipts, excess profits and similar taxes imposed on the Trustee in connection with the execution of its duties under this Agreement), assessments or license fees (and any charges, fines or penalties in connection therewith) (hereinafter called "impositions") hereafter levied or imposed upon or in connection with or measured by this Agreement or any of the instruments or agreements referred to herein or contemplated hereby or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which impositions the Company assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Company will also pay or cause to be paid promptly all impositions which may be imposed upon any unit of the Trust Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon the Trustee solely by reason of its interest therein, and any and all impositions upon or on account of the trust created by this Agreement, or the instruments or agreements referred to herein or contemplated hereby, and will keep at all times all and every part of such unit free and clear of all impositions which might in any way affect the interest of the Trustee or result in a lien upon or encumbrance upon such unit and will supply the Trustee with a receipt or other evidence of such payment satisfactory to the Trustee; *provided, however*, that the Company shall be under no obligation to pay any impositions so long as it or the Lessee is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Trustee, adversely affect the property or rights of the Trustee hereunder. If any impositions shall have been charged or levied against the Trustee directly and paid by the Trustee, the Company shall reimburse the Trustee, on presentation of invoice therefor; *provided, however*, that the Company shall not be obligated to reimburse the Trustee for any impositions so paid unless the Trustee shall have been in the opinion of its counsel legally liable with respect thereto, or unless the Company shall have approved the payment thereof.

In the event any reports with respect to impositions are required to be made on the basis of individual units of the Trust Equipment the Company will either make or cause to be made such reports in such manner as to show the interest of the Trustee in such units or will notify the Trustee of such requirement and will make or cause to be made such reports in such manner as shall be satisfactory to the Trustee.

In the event that, during the continuance of this Agreement, the Company becomes liable for the payment or reimbursement of any impositions, pursuant to this Section 4.10, such liability shall continue, notwithstanding the expiration of the term of this Agreement, until all such impositions are paid or reimbursed by the Company.

ARTICLE FIVE

EVENTS OF DEFAULT AND REMEDIES

SECTION 5.01. *Events of Default.* The Company covenants and agrees that in case:

(a) the Company shall default in the payment of any part of the rental payable hereunder for more than 15 days after the same shall have become due and payable, or

(b) the Company shall make or suffer any unauthorized assignment or transfer of its rights hereunder or under the Lease, or

(c) the Company shall, for more than 35 days after the Trustee shall have demanded in writing performance thereof, fail or refuse to comply with any other of the terms and covenants hereof on its part to be kept and performed, or to make provision satisfactory to the Trustee for such compliance, or

(d) a decree or order shall have been entered by a court of competent jurisdiction adjudging the Company bankrupt or insolvent or approving as properly filed a petition seeking reorganization or arrangement of the Company under any law relating to bankruptcy or insolvency, or appointing a receiver for the Trust Equipment or decreeing or ordering the winding up or liquidation of the affairs of the Company, and any such decree or order shall remain in force undischarged and unstayed for a period of 60 days, or

(e) the Company shall institute proceedings to be adjudicated bankrupt or insolvent or shall consent to the institution of bankruptcy or insolvency proceedings against it or shall file a petition or answer or consent seeking reorganization or relief under any law relating to bankruptcy or insolvency or shall consent to the filing of any such petition or shall consent to the appointment of a receiver for the Trust Equipment or shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due, or action shall be taken by the Company in furtherance of any of the aforesaid purposes, or

(f) an event of default shall occur under § 9 of the Lease, or

(g) the Lessee shall default in the observance or performance of any of the covenants and agreements on its part contained in the Lease (other than those relating to payment of any part of the rental provided in § 2 of the Lease) and such default shall continue for 35 days after the Trustee shall have demanded in writing performance thereof *unless* during such 35-day period the Company shall have cured or caused to be cured such default,

then, in any such case (herein sometimes called an Event of Default), if the same shall then be continuing, the Trustee in its discretion may, and upon the written request of the holders of not less than 25% in principal amount of the

then outstanding Trust Certificates shall, by notice in writing delivered to the Company, declare to be due and payable forthwith the entire amount of the rentals (except rentals required for the payment of interest accruing after the date of such declaration) payable by the Company as set forth in Section 4.04 and not theretofore paid. Thereupon the entire amount of such rentals shall forthwith become and shall be due and payable immediately without further demand, together with interest at the rate of $8\frac{1}{2}\%$ per annum, to the extent legally enforceable, on any portion thereof overdue.

In case one or more Events of Default shall happen, and if the same shall then be continuing, the Trustee in its discretion also may, and upon the written request of the holders of not less than 25% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company, declare the principal of all the Trust Certificates then outstanding to be due and payable, and thereupon the same shall become and be immediately due and payable.

In case the Company shall fail to pay any instalment of rental payable pursuant to Section 4.04(3) or (4) when and as the same shall have become due and payable hereunder, and such default shall have continued for a period of 15 days, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at law or in equity for the collection of the rentals so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may enforce judgment or final decree against the Company and collect in the manner provided by law out of the property of the Company wherever situated the moneys adjudged or decreed to be payable.

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company, or in case a receiver or trustee shall have been appointed for the Trust Equipment, or in case of any other judicial proceedings relative to the Company or the Trust Equipment, the Trustee, irrespective of whether the rental payments hereunder or the principal of the Trust Certificates shall then be due and payable as herein or therein expressed whether by declaration or otherwise and irrespective of whether the Trustee shall have made any demand or declaration pursuant to the provisions of this Section, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the entire amount of the rentals (except rentals required for the payment of interest accruing after the date of such declaration), and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee, its agents, attorneys and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its gross negligence or wilful misconduct) and of the holders of the Trust Certificates allowed in such proceedings and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute all amounts received with

respect to the claims of the holders of the Trust Certificates and of the Trustee on their behalf; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the holders of the Trust Certificates to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly to the holders of the Trust Certificates, to pay to the Trustee such amount as shall be sufficient to cover reasonable compensation to the Trustee, its agents, attorneys and counsel, and all other expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its gross negligence or wilful misconduct.

All rights of action and to assert claims under this Agreement, or under any of the Trust Certificates, may be enforced by the Trustee without the possession of any of the Trust Certificates or the production thereof on any trial or other proceedings relative thereto, and any such action or proceedings instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be for the ratable benefit of the holders of the Trust Certificates. In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this Agreement to which the Trustee shall be a party) the Trustee shall be held to represent all the holders of the Trust Certificates, and it shall not be necessary to make any holders of the Trust Certificates parties to such proceedings.

SECTION 5.02. *Remedies.* Neither the Trustee nor the Company shall have the right to terminate or impair the Lessee's possession or use of Trust Equipment subject to the Lease so long as the Lessee shall not be in default under the Lease. Subject to the preceding sentence, which qualifies this entire Agreement, upon the happening of any Event of Default the Trustee may by its agents enter upon the premises of the person having possession of the Trust Equipment and take possession of all or any part of the Trust Equipment and withdraw the same from said premises, retaining all payments which up to that time may have been made on account of rental for the Trust Equipment and otherwise, and shall be entitled to collect, receive and retain all unpaid per diem, mileage or other charges of any kind earned by the Trust Equipment or any part thereof, and may lease or otherwise contract for the use of the Trust Equipment or any part thereof; or the Trustee may with or without retaking possession (but only after declaring due and payable the entire amount of rentals payable by the Company and the principal of all the outstanding Trust Certificates, as provided in Section 5.01) sell the Trust Equipment or any part thereof, free from any and all claims of the Company at law or in equity, in one lot and as an entirety or in separate lots, at public or private sale, for cash or upon credit, or for part cash and part credit, in its discretion, and may proceed otherwise to enforce its rights and the rights of the holders of then outstanding Trust Certificates, all subject to any mandatory requirements of law applicable hereto. Upon any such sale, the Trustee itself may bid for the property offered for sale or any part thereof. Any such sale may be held or conducted at such place and at such time as the Trustee may specify, or as may be required by law, and without

gathering at the place of sale the Trust Equipment to be sold, and in general in such manner as the Trustee may determine, but so that the Company may and shall have a reasonable opportunity to bid at any such sale. After the Trustee has fully exercised its remedies hereunder, the Company shall cease to have any rights or remedies in respect of the Trust Equipment hereunder, and all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by the Company, and no payments theretofore made by the Company for the rent or use of the Trust Equipment or any of it shall give to the Company any legal or equitable interest or title in or to the Trust Equipment or any of it or any cause or right of action at law or in equity in respect of the Trust Equipment against the Trustee or the holders of Trust Certificates hereunder. No such taking possession, withdrawal, lease or sale of the Trust Equipment by the Trustee shall be a bar to the recovery by the Trustee from the Company of rentals then or thereafter due and payable, or of principal and interest in respect of the Trust Certificates, and the Company shall be and remain liable for the same until such sums have been realized as, with the proceeds of the lease or sale of the Trust Equipment, shall be sufficient for the discharge and payment in full of all the obligations of the Company under this Agreement (other than interest not then accrued), whether or not they shall have then matured.

SECTION 5.03. *Application of Proceeds.* If the Trustee shall exercise any of the powers conferred upon it by Sections 5.01 and 5.02, all payments made by the Company to the Trustee and the proceeds of any judgment collected from the Company by the Trustee, and the proceeds of every sale or lease by the Trustee of any of the Trust Equipment, together with any other sums which may then be held by the Trustee under any of the provisions hereof (other than sums held in trust for the payment of specific Trust Certificates or a part thereof, or interest thereon) shall be applied by the Trustee to the payment, in the following order of priority, (a) of all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions of this Agreement and (b) of the interest then due, with interest on overdue interest at the rate of $8\frac{1}{2}\%$ per annum to the extent legally enforceable, and of the principal of all the outstanding Trust Certificates, with interest thereon at the rate of $8\frac{1}{2}\%$ per annum to the extent legally enforceable from the date of default, whether such Trust Certificates shall have then matured by their terms or not, all such payments to be in full if such proceeds shall be sufficient, and if not sufficient, then *pro rata* without preference between principal and interest.

After all such payments shall have been made in full, the interests of the Trustee to any of the Trust Equipment remaining unsold shall be conveyed by the Trustee to the Company free from any further liabilities or obligations to the Trustee hereunder. If after applying all such sums of money realized by the Trustee as aforesaid there shall remain any amount due to the Trustee under the provisions hereof (hereinafter called the Deficiency) the Company agrees to pay the amount of the Deficiency to the Trustee, upon demand; and if the Company

shall fail to pay the Deficiency, the Trustee may bring suit therefor and shall be entitled to recover judgment therefor against the Company. If after applying as aforesaid the sums of money realized by the Trustee there shall remain a surplus in the possession of the Trustee, such surplus shall be paid to the Company.

SECTION 5.04. *Waivers of Default.* Prior to the declaration of the acceleration of the maturity of the rentals and of the maturity of all the Trust Certificates as provided in Section 5.01, the holders of a majority in aggregate principal amount of the Trust Certificates at the time outstanding may on behalf of the holders of all the Trust Certificates waive any past default and its consequences, except a default in the payment of any instalment of rental payable pursuant to Section 4.04(3) or (4), but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

If at any time after the principal of all the Trust Certificates shall have been declared and become due and payable or if at any time after the entire amount of rentals shall have been declared and become due and payable, all as provided in Section 5.01, but before July 1, 1992, all arrears of rent (with interest at the rate of $8\frac{1}{2}\%$ per annum upon any overdue instalments, to the extent legally enforceable), all expenses of the trust occasioned by the Company's default, and all other sums which shall have become due and payable by the Company hereunder (otherwise than by such declaration or declarations) shall be paid by the Company before any sale or lease by the Trustee of any of the Trust Equipment (or the making of any agreement for such sale or lease), and every other default shall be made good or secured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall be made therefor, then, and in every such case, the Trustee, if so requested by the holders of a majority in principal amount of the Trust Certificates then outstanding, shall by written notice to the Company waive the default by reason of which there shall have been such declaration or declarations and the consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

SECTION 5.05. *Obligations of Company Not Affected by Remedies.* No retaking of possession of the Trust Equipment by the Trustee, or any withdrawal, lease or sale thereof, nor any action or failure or omission to act against the Company or in respect of the Trust Equipment, on the part of the Trustee or on the part of the holder of any Trust Certificate, nor any delay or indulgence granted to the Company by the Trustee or by any such holder, shall affect the obligations of the Company hereunder.

The Company hereby waives presentation and demand in respect of any of the Trust Certificates and waives notice of presentation, of demand and of

any default in the payment of the principal of and interest on the Trust Certificates.

SECTION 5.06. *Company to Deliver Trust Equipment to Trustee.* In case the Trustee shall rightfully demand possession of any of the Trust Equipment in pursuance of this Agreement, the Company will, at its own expense, promptly cause such Trust Equipment to be placed on such storage tracks of the Lessee as shall reasonably be designated by the Trustee and will there deliver or cause to be delivered the same to the Trustee; or, at the option of the Trustee, the Trustee may keep such Trust Equipment, at the expense of the Company, on any lines of railroad of the Lessee or premises of the Lessee approved by the Trustee until the Trustee shall have leased, sold or otherwise disposed of the same. The performance of the foregoing covenant is of the essence of this Agreement and upon application to any court having jurisdiction in the premises, the Trustee shall be entitled to a decree against the Company requiring the specific performance thereof.

SECTION 5.07. *Trustee to Give Notice of Default.* The Trustee shall give to the holder of the Trust Certificates notice of each default hereunder known to the Trustee, within 30 days after it has actual knowledge of the same, unless remedied or cured before the giving of such notice.

SECTION 5.08. *Control by Holders of Trust Certificates.* The holders of a majority in aggregate principal amount of the then outstanding Trust Certificates, by an instrument or instruments in writing executed and delivered to the Trustee, shall have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee; *provided, however*, that the Trustee shall have the right to decline to follow any such direction if the Trustee shall be advised by counsel that the action so directed may not lawfully be taken.

SECTION 5.09. *Remedies Cumulative; Subject to Mandatory Requirements of Law.* The remedies in this Agreement provided in favor of the Trustee and the holders of the Trust Certificates, or any of them, shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in their favor existing at law or in equity; and such remedies so provided in this Agreement shall be subject in all respects to any mandatory requirements of law at the time applicable thereto, to the extent such requirements may not be waived on the part of the Company.

SECTION 5.10. *Transfer of Trust Certificates to the Company.* At any time after the occurrence and during the continuation of an Event of Default and upon request of the Company made to each holder of an outstanding Trust Certificate, each holder of a Trust Certificate agrees that, unless the holders of a majority in aggregate principal amount of the Trust Certificates shall have

waived such Event of Default, it will, upon receipt from the Company of an amount equal to the aggregate unpaid principal of and accrued interest on all Trust Certificates then held by such holder plus all other sums then due and payable to such holder hereunder or under such Trust Certificates, forthwith sell, assign, transfer and convey to the Company all of the right, title and interest of such holder in and to the Trust Equipment, this Agreement, all Trust Certificates then held by such holder, the Purchase Agreement, the Lease, the Assignment and the Consent. Anything contained in this Section to the contrary notwithstanding, no holder of any outstanding Trust Certificate shall have any obligation to sell such Trust Certificate to the Company unless the event constituting the Event of Default shall also constitute an Event of Default under the Lease. If the Company shall request, such holder will comply with all the provisions of Section 2.05 to enable new Trust Certificates to be issued to the Company in such denominations as the Company shall request. All charges and expenses required pursuant to Section 2.05 in connection with the issuance of any new Trust Certificates shall be borne by the Company. In the event that the Company shall have acquired all the Trust Certificates in the manner contemplated by this Section and all amounts owing to the Trustee pursuant to this Agreement shall have been paid, the Trustee shall not exercise any remedies under this Agreement, the Assignment or the Lease without the approval of the Company.

ARTICLE SIX

ADDITIONAL COVENANTS AND AGREEMENTS BY THE COMPANY

SECTION 6.01. *Discharge of Liens.* The Company covenants and agrees that it will pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any debt, tax, charge, assessment, obligation or claim which if unpaid might become a lien, charge or encumbrance upon or against any of the Trust Equipment ranking prior to or *pari passu* with the interests of the Trustee; but this provision shall not require the payment of any such debt, tax, charge, assessment, obligation or claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings, *provided* that such contest will not adversely affect the rights or interests of the Trustee or the holders of the Trust Certificates and the Company and the Lessee shall have furnished the Trustee with an Opinion of Counsel to such effect.

SECTION 6.02. *Recording.* The Company will at its own expense, promptly after the execution and delivery of this Agreement, the Lease and the Assignment (including the Consent), and each supplement or amendment hereto or thereto, respectively, cause the same to be duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Inter-

state Commerce Act of the United States and deposited with the Registrar General of Canada, and cause notice of such deposit to be forthwith thereafter given in the *Canada Gazette*, pursuant to Section 86 of the Railway Act of Canada. The Company will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister or redeposit whenever required) any and all further instruments reasonably requested by the Trustee for the purposes of proper protection, to the satisfaction of the Trustee, of the title of the Trustee to the Trust Equipment and the rights of the holders of the Trust Certificates, or for the purpose of carrying out the intention of this Agreement.

SECTION 6.03. *Further Assurances.* The Company covenants and agrees from time to time at its expense to do all such acts and execute all such instruments of further assurance as it shall be reasonably requested by the Trustee to do or execute for the purpose of fully carrying out and effectuating this Agreement and the intent hereof.

ARTICLE SEVEN

CONCERNING THE HOLDERS OF TRUST CERTIFICATES

SECTION 7.01. *Evidence of Action Taken by Holders of Trust Certificates.* Whenever in this Agreement it is provided that the holders of a specified percentage in aggregate principal amount of the Trust Certificates may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action the holders of such specified percentage have joined therein may be evidenced by any instrument or any number of instruments of similar tenor executed by holders of Trust Certificates in person or by agent or proxy appointed in writing.

SECTION 7.02. *Proof of Execution of Instruments and of Holding of Trust Certificates.* Proof of the execution of any instrument by a holder of Trust Certificates or his agent or proxy and proof of the holding by any person of any of the Trust Certificates shall be sufficient if made in the following manner:

The fact and date of the execution by any such person of any instrument may be proved by the certificate of any notary public or other officer of any jurisdiction within Canada or the United States authorized to take acknowledgments of deeds to be recorded in such jurisdiction that the person executing such instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution sworn to before any such notary or other such officer or in any other manner which the Trustee deems sufficient.

The ownership of Trust Certificates and the unpaid principal amount thereof may be proved by the register of such Certificates or by a certificate of the Trustee.

SECTION 7.03. *Trust Certificates Owned by Company.* In determining whether the holders of the requisite principal amount of the Trust Certificates have concurred in any direction, request or consent under this Agreement, Trust Certificates (other than those acquired by the Company in the manner required by Section 5.10) which are owned by the Company, the Lessee or by an Affiliate of the Company or the Lessee shall (unless all of the Trust Certificates are so owned) be disregarded, except that for the purpose of determining whether the Trustee shall be protected in relying on any such direction, request or consent, only Trust Certificates which the Trustee actually knows are so owned shall be disregarded.

SECTION 7.04. *Right of Revocation of Action Taken.* At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 7.01, of the taking of any action by the holders of the percentage in aggregate principal amount of the Trust Certificates specified in this Agreement in connection with such action, any holder of a Trust Certificate the serial number of which is shown by the evidence to be included in the Trust Certificates the holders of which have consented to such action may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 7.02, revoke such action in so far as concerns such Trust Certificate. Except as aforesaid, any such action taken by the holder of any Trust Certificate shall be conclusive and binding upon such holder and upon all future holders and owners of such Trust Certificate and of any Trust Certificate issued in exchange or substitution therefor, irrespective of whether or not any notation in regard thereto is made upon such Trust Certificate. Any action taken by the holders of the percentage in aggregate principal amount of the Trust Certificates specified in this Agreement in connection with such action shall be conclusive and binding upon the Company, the Trustee and the holders of all the Trust Certificates.

ARTICLE EIGHT

THE TRUSTEE

SECTION 8.01. *Acceptance of Trust.* The Trustee hereby accepts the trust imposed upon it by this Agreement, and covenants and agrees to perform the same as herein expressed.

SECTION 8.02. *Duties and Responsibilities of the Trustee.* In case an Event of Default has occurred which has not been cured and of which the Trustee has knowledge, the Trustee shall exercise such of the rights and powers vested in it

by this Agreement and use the same degree of care and skill in its exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

No provision of this Agreement shall be construed to relieve the Trustee from liability for its own grossly negligent action, its own grossly negligent failure to act, or its own wilful misconduct, except that

(a) prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred:

(1) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Agreement, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Trustee; and

(2) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Agreement; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Agreement;

(b) the Trustee shall not be liable for any error of judgment made by it in good faith, unless it shall be proved that the Trustee was grossly negligent in ascertaining the pertinent facts or that its action or inaction was contrary to the express provisions of this Agreement;

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of a majority in aggregate principal amount of the then outstanding Trust Certificates relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred upon the Trustee under this Agreement;

(d) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, Trust Certificate, guaranty or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties;

(e) the Trustee may consult with counsel, and any Opinion of Counsel shall be full and complete authorization and protection in respect

of any action taken or suffered by it hereunder in good faith and in accordance with such Opinion of Counsel and not contrary to any express provision of this Agreement;

(f) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Agreement at the request, order or direction of any of the holders of the Trust Certificates, pursuant to the provisions of this Agreement, unless such holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred therein or thereby; and

(g) the Trustee shall not be liable for any action taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Agreement.

SECTION 8.03. *Application of Rentals; Responsibility of Trustee.* The Trustee covenants and agrees to apply the rentals received by it under Section 4.04 when and as the same shall be received, and to the extent that such rentals shall be sufficient therefor, for the purposes specified in Section 4.04.

The Trustee shall not be required to undertake any act or duty in the way of insuring, taking care of or taking possession of the Trust Equipment or to undertake any other act or duty under this Agreement until fully indemnified to its satisfaction by the Company or by one or more of the holders of the Trust Certificates against all liability and expenses; and the Trustee shall not be responsible for the filing or recording, required under Section 6.02, of this Agreement or of any supplement hereto or statement of new identifying numbers.

Other than as provided in Section 3.04 hereof, the Trustee has not received and is not expected to receive any assurance as to the validity or perfection under Canadian law of the title to the Trust Equipment sold, assigned and transferred to it pursuant to Section 3.01 hereof as to the protection of its rights hereunder in Canada, and the Trustee shall have no responsibility with respect to such title or the protection of such rights in Canada.

SECTION 8.04. *Funds May be Held by Trustee.* Any money at any time paid to or held by the Trustee hereunder until paid out or invested by the Trustee as herein provided need not be segregated in any manner except to the extent required by law and may be carried by the Trustee on deposit with its general banking department, and the Trustee shall not be liable for any interest thereon.

At any time, and from time to time, prior to May 1, 1972, if at the time no Event of Default shall have occurred and be continuing, the Trustee, on the written or telegraphic request of the Lessee, shall invest and reinvest Deposited Cash held by it in Investments, at such prices, including any premium

and accrued interest, as set forth in such request, such Investments to be held by the Trustee in trust for the benefit of the holders of the Trust Certificates.

The Trustee shall, on Request, in the event funds are required in connection with a settlement for Trust Equipment pursuant to Section 3.02 or in the event funds are required for the prepayment of the Trust Certificates pursuant to Section 3.01 or Section 4.07, sell such Investments, or any portion thereof, and restore to Deposited Cash the proceeds of any such sale up to the amount paid for such Investments, including any accrued interest. The Trustee shall sell all Investments prior to May 1, 1972.

The Trustee shall restore to Deposited Cash, out of rentals received by it for that purpose under the provisions of Section 4.04(1), an amount equal to any expenses incurred in connection with any purchase, sale or redemption of Investments and also an amount equal to any loss of principal (including interest accrued thereupon at the time of purchase) incurred in connection with any such purchase, sale or redemption.

Any interest (in excess of accrued interest paid from Deposited Cash at the time of purchase) or other profit which may be realized from any sale or redemption of Investments and held by the Trustee shall be paid to the Lessee, as a third-party beneficiary of the Trustee's agreement under this paragraph, on May 1, 1972, or on such earlier date as may be agreed upon by the Trustee and the Company, *provided* that the Company is not in default hereunder and the Lessee is not in default under the Lease.

SECTION 8.05. *Trustee Not Liable for Delivery Delays or Defects in Equipment or Title; Agents; Expenses; etc.* The Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, or for any default on the part of the Company, or for any defect in any of the Trust Equipment or in the title thereto, nor shall anything herein be construed as a warranty on the part of the Trustee in respect thereof or as a representation on the part of the Trustee in respect of the value thereof or in respect of the title thereto.

The Trustee may perform its powers and duties hereunder by or through such attorney and agents as it shall appoint, and shall be answerable only for its own acts, and not for the acts of any co-trustee or separate trustee appointed under Section 8.09 hereof or for the acts of any attorney or other agent appointed by it with reasonable care. The Trustee shall not be responsible in any way for the recitals herein contained or for the execution or validity of this Agreement, the Lease, the Assignment, the Consent, or of the Trust Certificates (except the Trustee for its own execution thereof).

The Trustee may in its individual capacity own, hold and dispose of Trust Certificates.

Any moneys at any time held by the Trustee shall, until paid out or invested as herein provided, be held by it in trust as herein provided for the benefit of the holders of the Trust Certificates.

SECTION 8.06. Resignation and Removal of Trustee; Appointment of Successor Trustee.

(a) The Trustee may resign and be discharged of the trust created by this Agreement by giving 30 day's written notice to the Company and to the registered holders of the Trust Certificates and such resignation shall take effect 30 days after the delivery thereof to the Company or upon receipt by the Trustee of an instrument of acceptance executed by a successor trustee as hereinafter provided in this Section.

(b) The Trustee may be removed at any time by an instrument in writing signed by the holders of a majority in principal amount of the Trust Certificates then outstanding, delivered to the Trustee and the Company.

(c) If at any time the Trustee shall resign or be removed or otherwise become incapable of acting or, if at any time a vacancy shall occur in the office of the Trustee for any other cause, a successor trustee may be appointed by the holders of a majority of the aggregate principal amount of the then outstanding Trust Certificates by an instrument in writing delivered to the Company and the Trustee. Until a successor trustee shall be appointed by the holders of Trust Certificates as herein authorized, the Company by an instrument in writing executed by order of its Board of Directors shall appoint a trustee to fill such vacancy. A successor trustee so appointed by the Company shall immediately and without further act be superseded by a successor trustee appointed by the holders of Trust Certificates in the manner provided above. Every successor trustee appointed pursuant to this Section shall be a trust company incorporated under the laws of Canada or any Province thereof and having a capital and surplus of not less than \$25,000,000, if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

(d) The Company shall give notice to the holders of all outstanding Trust Certificates of each resignation or removal of the then Trustee and of each appointment by the Company of a successor trustee pursuant to this Section by mailing written notice of such event by first-class mail, postage prepaid.

SECTION 8.07. Acceptance of Appointment by Successor Trustee. Any successor trustee appointed as provided in Section 8.06 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon (unless such resignation shall have become effective earlier pursuant to Section 8.06(a)) the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as Trustee herein; but, nevertheless, on the

written request of the Company or of the successor trustee, upon payment of its charges then unpaid, the trustee ceasing to act shall execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such trustee by it or for its account to secure any amounts then due it pursuant to the provisions of Section 8.05.

SECTION 8.08. *Merger, Amalgamation or Consolidation of Trustee.* Any corporation into which the Trustee may be merged or amalgamated or with which it may be consolidated or any corporation resulting from any merger, amalgamation or consolidation to which the Trustee shall be a party shall be the successor of the Trustee hereunder, *provided* such corporation shall be qualified under the provisions of Section 8.06, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

SECTION 8.09. *Appointment of Co-Trustees and Separate Trustees.* If at any time or times the holders of a majority in principal amount of the then outstanding Trust Certificates shall in writing request the Trustee and the Company, or the Trustee shall in writing request the Company, the Trustee and the Company shall execute and deliver all instruments and agreements necessary or proper to appoint another bank or trust company, either to act hereunder as co-trustee or co-trustees with respect to all or any of the Trust Equipment jointly with the Trustee or to act hereunder as separate trustee or trustees with respect to any such equipment, with such power and authority and entitled to the benefit of such provisions hereunder as shall be specified in the instrument of appointment. In the event the Company shall not have jointed in the execution of such instruments and agreements within 10 days after the receipt of a written request so to do from the Trustee or from the holders of a majority in principal amount of the then outstanding Trust Certificates, or in case an Event of Default shall have occurred and be continuing, the Trustee may act under the foregoing provisions of this Section 8.09 without the concurrence of the Company; and the Company hereby fully empowers the Trustee so to act and appoints the Trustee its agent and attorney to act for it under the foregoing provision of this Section 8.09 in either of such contingencies. Every co-trustee or separate trustee appointed hereunder shall be a national bank or a bank or trust company incorporated under the laws of Canada or any Province or incorporated under the laws of the United States or any State thereof and having a capital and surplus of not less than \$25,000,000, if there be such an institution willing, qualified and able to accept the position of co-trustee or separate trustee upon reasonable or customary terms.

SECTION 8.10. *Transfer of Title by the Trustee.* In any transfer hereunder by the Trustee of title to a unit, the Trustee shall covenant that it has not charged or encumbered such unit except as provided herein and the Trustee shall not be required to give any further covenant as to title to such unit.

ARTICLE NINE

MISCELLANEOUS

SECTION 9.01. *Rights Confined to Parties and Holders.* Nothing expressed or implied herein is intended or shall be construed to confer upon or to give to any person, firm or corporation, other than the parties hereto, the holders of the Trust Certificates and the assignees and/or transferees contemplated by the second paragraph of Section 4.08 any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the parties hereto and their successors and of the holders of the Trust Certificates and such assignees and transferees.

SECTION 9.02. *Ontario Law Governs.* The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the Province of Ontario, Canada; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act of the United States, the applicable recordings laws of Canada and the Provinces and Territories thereof and such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof or out of the marking of the Trust Equipment as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited or in which any Trust Equipment may be located.

SECTION 9.03. *Binding Upon Assigns.* Except as otherwise provided herein, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

SECTION 9.04. *Satisfaction of Obligations.* The obligations of the Company under Section 4.04(1), Section 4.04(3) (only to the extent of the Lessee's obligations under paragraph (a) of § 18 of the Lease), Section 4.06, the first and last paragraphs of Section 4.07, Section 4.09, Section 4.10, Section 5.06 and Section 6.01 shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Company shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed by the Lessee such non-performance shall constitute the basis for an Event of Default hereunder pursuant to Section 5.01.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings and agreements herein made on the part of the Company, while in form purporting to be the representations, covenants, undertakings and agreements of the Company are nevertheless each and every one of them, made and intended not as personal representations, covenants, undertakings and agreements by the Company or for the purpose or with the intention of binding the Company personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Owner Trust Agreement, and this Agreement is executed and delivered by the Company not in its own right but solely in the exercise of the powers expressly conferred upon it as such Owner-Trustee (as such term is used in the Owner Trust Agreement); and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Company, or any beneficiary of the trust under which the Company is acting on account of this Agreement or on account of any representation, covenant, undertaking or agreement of the Company or any beneficiary under the Trust Agreement, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Trustee and by all persons claiming by, through or under the Trustee; *provided, however*, that the Trustee or any person claiming by, through or under it, making claim hereunder, may look to the Trust Estate for satisfaction of the same.

SECTION 9.05. *Notices.* Except as otherwise expressly provided herein, all demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered at or mailed by registered mail to (a) in the case of the Company, 110 Yonge Street, Toronto, Ontario, Canada, attention of Corporate Trust Department, or such other address as may hereafter be furnished to the Trustee in writing by the Company, (b) in the case of the Trustee, at its Corporate Trust Office, attention of the Corporate Trust Division or such other address as may hereafter be furnished to the Company in writing by the Trustee. An affidavit by any person representing or acting on behalf of the Company or the Trustee as to such mailing, having the registry receipt attached, shall be conclusive evidence of the giving of such demand, notice or communication.

SECTION 9.06. *Effect of Headings.* The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

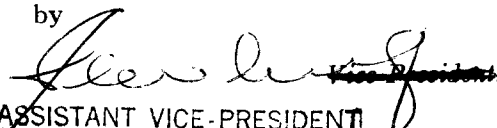
SECTION 9.07. *Execution.* Although this Agreement is dated as of December 31, 1971, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

SECTION 9.08. *Applicable Laws.* Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Company hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

IN WITNESS WHEREOF, the Trustee and the Company have caused their names to be signed hereto by their respective officers thereunto duly authorized and their respective corporate seals, duly attested, to be hereunder affixed as of the day and year first written.


CANADA PERMANENT TRUST
COMPANY, as Trustee,

by


ASSISTANT VICE-PRESIDENT

[CORPORATE SEAL]

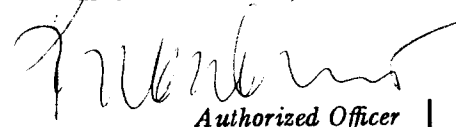

Attest:




ASSOCIATE SECRETARY


THE CANADA TRUST COMPANY,
as Owner-Trustee,

by

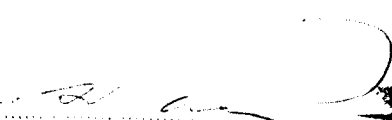

Authorized Officer |

Authorized Officer |

[CORPORATE SEAL]

Attest:



APPROVED AS TO
FORM AND CONTENT



PROVINCE OF ONTARIO }
JUDICIAL DISTRICT OF YORK } ss.:

On this *14th* day of January, 1972, before me personally appeared **R. A. PARKER** to me personally known, who, being by me duly sworn, says that he is ~~Vice~~ *President* of CANADA PERMANENT TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its By-Laws, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

John J. Pollock
Notary Public

[NOTARIAL SEAL]

PROVINCE OF ONTARIO }
JUDICIAL DISTRICT OF YORK } ss.:

On this *14th* day of January, 1972, before me personally appeared *A. M. Anderson*, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CANADA TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

John J. Pollock
Notary Public

[NOTARIAL SEAL]

SCHEDULE I

<u>Quantity</u>	<u>Type and Specifications</u>	<u>Cost</u>	<u>Identifying Numbers (both inclusive)</u>
150	Tri-level cars; CN Specification F-140-1 dated May, 1971, General Arrangement Drawing 9H-37476 and Specification SS-1966 and Letter of Manufacturer to Lessee dated June 11, 1971	\$4,679,491.50 (Canadian)	CN 700500 to 700649

Manufacturing Agreement

Dated as of December 31, 1971

among

NATIONAL STEEL CAR
CORPORATION, LIMITED,

THE CANADA TRUST COMPANY,
as Owner-Trustee

and

CANADIAN NATIONAL RAILWAY COMPANY

Covering 150 Tri-Level Cars

MANUFACTURING AGREEMENT dated as of December 31, 1971, among the corporation named in Item 1 Schedule I hereto (hereinafter called the Manufacturer), THE CANADA TRUST COMPANY, a trust company incorporated under the laws of Canada, as Owner-Trustee (hereinafter called the Company) under a Trust Agreement dated as of December 31, 1971, with First Security Bank of Idaho, National Association, and Canadian National Railway Company, a corporation duly incorporated under the laws of Canada (hereinafter called the Lessee).

WHEREAS the Manufacturer agrees to construct, sell and deliver to the order of the Company and the Company agrees to cause to be purchased the units of new, standard gauge railroad equipment described in Schedule II attached hereto (hereinafter called the Equipment); and

WHEREAS in consideration of the execution and delivery of this Agreement, the purchase agreements or purchase orders, if any, heretofore executed between the Lessee and the Manufacturer covering the Equipment are hereby cancelled in so far as they relate to the Equipment; and

WHEREAS the Company proposes to enter into an Equipment Trust Agreement dated as of the date hereof (hereinafter called the Equipment Trust Agreement) with The Canada Trust Company, as Trustee (hereinafter called the Trustee); and

WHEREAS it is contemplated that, pursuant to the Equipment Trust Agreement, there will be paid by the Trustee to the Manufacturer on one or more Closing Dates (as hereinafter defined) the Purchase Price (as hereinafter defined) of all the Equipment; and

WHEREAS the Company, as lessor, is executing a lease of the Equipment dated as of the date hereof to the Lessee in substantially the form annexed to the Equipment Trust Agreement as Annex B (hereinafter called the Lease) and the Lessee has joined in this Agreement for the purpose of making certain agreements as hereinafter set forth.

Now, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. *Construction and Sale.* Subject to the terms and conditions hereinafter set forth, the Manufacturer will construct the Equipment at its plant set forth in Schedule II hereto and will sell and deliver the Equipment as hereinbelow provided and the Company will arrange for the payment by the Trustee to the Manufacturer of the Purchase Price of the Equipment, each unit of which will be constructed in accordance with the specifications referred to in Schedule II hereto and in accordance with such modifications thereof as may have been agreed upon in writing by the Manufacturer and the Lessee (which specifications and modifications, if any, are hereinafter called the Speci-

fications) and will, at or before delivery thereof pursuant to Article 2 hereof, have the following ownership markings stencilled on each side thereof in a conspicuous place in letters not less than one inch in height:

“OWNED BY CANADA PERMANENT TRUST COMPANY, 320 BAY STREET, TORONTO, ONTARIO, CANADA, AS TRUSTEE UNDER THE TERMS OF AN EQUIPMENT TRUST AGREEMENT”.

The Manufacturer agrees that the design, quality and component parts of the Equipment except as to design quality and component parts specified or supplied by the Lessee will conform to all requirements and specifications of the United States Federal Railroad Administration and the Canadian Transport Commission and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to new railroad equipment of the character of such units of the Equipment as of the date of delivery thereof.

ARTICLE 2. *Delivery.* The Manufacturer will deliver the Equipment to the Lessee, as agent of the Trustee, freight charges, if any, prepaid, at such point or points as shall be specified in Schedule II hereto, and in accordance with the time of delivery schedule set forth in Schedule II hereto, *provided, however*, that no unit of the Equipment shall be delivered under this Agreement until the Equipment Trust Agreement and the Lease, together with the Assignment, including the Consent (both as defined in the Equipment Trust Agreement), shall have been filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act of the United States and deposited with the Registrar General of Canada (notice of such deposit to be forthwith thereafter given in the *Canada Gazette*) pursuant to Section 86 of the Railway Act of Canada (and in delivering the Equipment, the Manufacturer may rely upon telegraphic advice from counsel for the Lessee that the Equipment Trust Agreement, the Lease and the Assignment (including the Consent) have been so filed, recorded and deposited).

The Manufacturer and the Lessee each severally represents and warrants that, to the best of its knowledge, at the time of the delivery of the Equipment to the Lessee, as agent of the Trustee, and the Company, the Equipment will be new railroad equipment, not having been used by any person after completion of manufacture and prior to delivery, and no capital cost allowance will have been claimed by any person with respect thereto.

The Manufacturer's obligation as to time of delivery is subject to delays resulting from causes beyond the Manufacturer's reasonable control, including, but not limited to, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, labor shortages, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities or delays in receiving necessary materials.

Notwithstanding the preceding provisions of this Article 2, any unit of the Equipment not delivered, accepted and settled for pursuant to Article 3 hereof on or before May 1, 1972 shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. If the Manufacturer's failure to deliver the units of the equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph, a separate agreement shall be entered into between the Manufacturer and the Lessee providing for the purchase of such excluded equipment by the Lessee on the terms herein specified, payment to be made in cash in accordance with the terms of this Agreement after delivery of such excluded equipment either directly or by means of a conditional sale, equipment trust or such other appropriate method of financing the purchase as the Lessee and the Manufacturer shall mutually determine.

The Equipment shall be subject to inspection and approval prior to delivery by inspectors or other authorized representatives of the Company (who may be employees or authorized representatives of the Lessee) and the Manufacturer shall grant to any such inspector or other authorized representative reasonable access to its plant. From time to time upon the completion of the construction of each unit or a number of units of the Equipment, such unit or units shall thereupon be presented to an inspector or other authorized representative of the Company and the Lessee for inspection at the Manufacturer's plant and, if each unit conforms to the Specifications and the other requirements, specifications and standards set forth or referred to in Article 1 hereof, such inspector or authorized representative shall promptly execute and deliver to the Manufacturer, in such number of counterparts or copies as may reasonably be requested, a certificate of acceptance (hereinafter called a Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Company and the Trustee and are marked in accordance with Article 1 hereof; *provided, however*, that the Manufacturer shall not thereby be relieved of its warranty contained in Item 3 of Schedule I hereto.

On acceptance of each of the units of the Equipment pursuant to this Article 2 on behalf of the Company and the Trustee as aforesaid, the Company assumes with respect thereto the responsibility and risk of loss or damage and the Manufacturer shall deliver to the Trustee (i) an invoice describing such unit and stating that such unit is new standard gauge railroad equipment (other than passenger or work equipment) first put into service no earlier than the date of such delivery and acceptance, and that the Purchase Price of such unit is an amount therein specified in Canadian dollars and (ii) a bill of sale transferring title to such unit to the Trustee and warranting to the Trustee, the Company and the Lessee that at the time of such delivery the Manufacturer had legal title to such unit and good and lawful right to sell the same and that title to such unit was, at the time of such delivery of such unit, free from all claims, liens, security interests and other encumbrances of any nature except as created by this Agreement, the Equipment Trust Agreement or as permitted

by Section 6.01 thereof and except for the rights of the Lessee under the Lease and warranting to the Trustee, the Company and the Lessee the materials and workmanship with respect to the Equipment as set forth in Item 3 of Schedule I.

ARTICLE 3. *Purchase Price and Payment.* The base price per unit of the Equipment, stated in Canadian dollars, is set forth in Schedule II hereto. Such base price, which shall include (a) sales taxes and (b) freight charges, if any, prepaid by the Manufacturer, from the Manufacturer's plant to the point of delivery, is subject to such increase or decrease as may be or has been agreed to by the Manufacturer and the Lessee whether such prior agreement is cancelled hereby or not and including a decrease, if any, to the extent contemplated by Item 5 of Schedule I hereto, *provided, however*, that such increase with respect to any unit shall not exceed 5% of the base price set forth in Schedule II hereto. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased. If on any Closing Date the aggregate of the Invoiced Purchase Prices (as hereinafter defined in this Article 3) for which settlement has theretofore been and is then being made under this Agreement, would, but for the provisions of this sentence, exceed \$4,708,500 (Canadian) (or such larger amount as the Company may at its option agree to), the Manufacturer will, upon request of the Company, enter into an agreement excluding from this Agreement such unit or units of the Equipment then proposed to be settled for as specified by the Company, as will, after giving effect to such exclusion, reduce such aggregate Invoiced Purchase Prices to not more than \$4,708,500 (Canadian) (or such larger amount as aforesaid); and the Lessee agrees to purchase on the terms herein specified any such unit or units of the Equipment so excluded from this Agreement from the Manufacturer for cash on the Closing Date, or on such other date to which the Manufacturer and the Lessee shall mutually agree, either directly or, if the Manufacturer and the Lessee shall mutually agree, by means of a conditional sale, equipment trust or other appropriate method of financing; in which event the Company shall execute such instruments and take such other action as shall be reasonably requested by the Lessee to vest in the Lessee or its designee, full title to such unit or units.

The Equipment shall be settled for on one or more Closing Dates (fixed as hereinafter provided) as specified in Item 2 of Schedule I hereto (the Equipment settled for on each Closing Date being hereinafter called a Group).

Subject to the provisions of Article 4 hereof, the Company hereby promises to cause the Trustee to pay in cash to the Manufacturer at such place as the Manufacturer may designate, on each Closing Date with respect to a Group, the amounts set forth in Section 3.02 and Section 3.03 of the Equipment Trust Agreement.

The term "Closing Date" with respect to any Group of the Equipment shall mean May 1, 1972, or such earlier date following the date of deposit of the net proceeds of the sale of the Equipment Trust Certificates (hereinafter called the Equipment Trust Certificates) issued pursuant to Section 2.01 of the

Equipment Trust Agreement, following presentation by the Manufacturer to the Trustee of the invoice and the Certificate or Certificates of Acceptance for such group, as shall be fixed by the Company and the Lessee by written notice delivered to the Manufacturer and the Trustee at least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and legal holidays or days on which banking institutions are authorized by law to close in Toronto, Ontario, Canada.

If the Manufacturer shall not receive on the Closing Date with respect to a Group of the Equipment the amounts payable to the Manufacturer in respect of such Group pursuant to the third paragraph of this Article 3 and Sections 3.02 and 3.03 of the Equipment Trust Agreement, the Manufacturer will promptly notify the Company and the Lessee of such event and, if such amount shall not have been previously paid and the Manufacturer shall have otherwise complied with the conditions of this Agreement to entitle the Manufacturer to receive payment hereunder and thereunder, the Lessee will, not later than 90 days after the Closing Date, make payment to the Manufacturer of such amounts, together with interest on the Invoiced Purchase Prices from such Closing Date to the date of payment by the Lessee at a rate to be established by mutual agreement between the Manufacturer and the Lessee or the maximum rate permitted by law, whichever is the lesser; in which event the Company shall execute such instruments and take such other action as shall be reasonably requested by the Lessee to vest in the Lessee or its designee full title to such Equipment. If the Lessee shall not make payment as aforesaid, the Company shall execute such instruments and take such other action as shall be reasonably requested by the Manufacturer to vest in the Manufacturer or its designee full title to such Equipment, whereupon the Manufacturer may, at its election, sell, lease, retain or otherwise dispose of such Equipment as may be permitted by law, *provided, however*, that the Lessee shall not thereby be relieved of its obligations to make payment to the Manufacturer as aforesaid.

Upon payment to the Manufacturer for any Group of Equipment as provided for in this Agreement, any and all claims, liens, security interests or other encumbrances of any nature of the Manufacturer with respect to title to such Group of Equipment under this Agreement shall forthwith cease and determine.

Notwithstanding the preceding provisions of this Article 3, any unit of the Equipment not delivered, accepted and settled for pursuant to this Article 3 on or before May 1, 1972, shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement.

ARTICLE 4. *Conditions to Obligations of the Company.* The obligation of the Company under this Agreement to cause to be paid to the Manufacturer any amount required to be paid pursuant to the third paragraph of Article 3 hereof with respect to any Group of the Equipment is subject to the conditions (a) that

the conditions set forth in Section 3.02 (i) and (ii) of the Equipment Trust Agreement have been complied with, and (b) that the Company shall have received, on or prior to the Closing Date, the following documents in such number of counterparts or copies as may reasonably be requested in form and substance satisfactory to it: (i) the documents referred to in Section 3.04 of the Equipment Trust Agreement, (ii) a Lessee's Certificate (as defined in the Equipment Trust Agreement) dated the Closing Date to the effect that no Event of Default (as defined in the Equipment Trust Agreement) which relates to the Lessee nor an Event of Default (as defined in the Lease), nor any event which with the lapse of time and/or notice provided for in the Equipment Trust Agreement or in the Lease would constitute such an Event of Default thereunder shall have occurred and be continuing; and (iii) such other documents as the Company may reasonably request.

ARTICLE 5. *Warranties.* The agreement of the parties relating to the Manufacturer's warranty of materials and workmanship is set forth in Item 3 of Schedule I hereto, which said Item 3 is by this reference made a part hereof.

ARTICLE 6. *Patent Indemnities.* Except in case of designs, processes or combinations specified by the Lessee and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Lessee and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Company, the Trustee and the Lessee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Company, the Trustee and the Lessee because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, process, combination, article or material infringing or claimed to infringe on any patent or other right. The Lessee likewise will indemnify, protect and hold harmless the Manufacturer, the Trustee and the Company from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Manufacturer, the Trustee or the Company, as the case may be, because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, process or combination specified by the Lessee and not developed or purported to be developed by the Manufacturer, or article or material specified by the Lessee and not manufactured by the Manufacturer, which infringes or is claimed to infringe on any patent or other right. The Manufacturer agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Lessee every claim, right and cause of action which the Manufacturer has or hereafter shall have against the originator or seller or sellers of any design, process, combination, article or material specified by the Lessee and used by the Manufacturer in or about the construction or operation of the Equipment, or

ARTICLE 10. *Effect and Modification of Agreement.* This Agreement, and the Schedules relating hereto, exclusively and completely state the rights and agreements of the Manufacturer, the Company and the Lessee with respect to Equipment and supersede all other agreements, oral or written, with respect to the Equipment. No variation of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Company, the Manufacturer and the Lessee.

ARTICLE 11. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the Province of Ontario, Canada.

ARTICLE 12. *Successors and Assigns.* As used herein the terms Manufacturer, Company, Trustee and Lessee shall be deemed to include the successors and assigns of the Manufacturer, the Company, the Trustee and the Lessee.

ARTICLE 13. *Execution.* This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this Agreement to be duly executed as of the date first above written.

NATIONAL STEEL CAR CORPORATION,
LIMITED

by

President and General Manager |

[CORPORATE SEAL]

Attest:

Secretary.

THE CANADA TRUST COMPANY,
as Owner-Trustee

by

Authorized Officer |

[CORPORATE SEAL]

Attest:

Authorized Officer |

CANADIAN NATIONAL RAILWAY
COMPANY

by

Vice-President

[CORPORATE SEAL]

Attest:

Deputy Secretary.

Approved
as to form

PROVINCE OF ONTARIO }
CITY OF HAMILTON } ss.:

On this day of January, 1972, before me personally appeared ,
to me personally known, who, being by me duly sworn, says that he is President
and General Manager of NATIONAL STEEL CAR CORPORATION, LIMITED, that
one of the seals affixed to the foregoing instrument is the corporate seal of said
corporation, that said instrument was signed and sealed on behalf of said cor-
poration by authority of its Board of Directors and he acknowledged that the
execution of the foregoing instrument was the free act and deed of said corpora-
tion.

.....
Notary Public

[NOTARIAL SEAL]

PROVINCE OF ONTARIO }
JUDICIAL DISTRICT OF YORK } ss.:

On this day of January, 1972, before me personally appeared ,
to me personally known, who, being by me duly sworn, says that he is an
Authorized Officer of THE CANADA TRUST COMPANY, that one of the seals
affixed to the foregoing instrument is the corporate seal of said corporation, that
said instrument was signed and sealed on behalf of said corporation by authority
of its Board of Directors and he acknowledged that the execution of the fore-
going instrument was the free act and deed of said corporation.

.....
Notary Public

[NOTARIAL SEAL]

PROVINCE OF QUEBEC }
CITY OF MONTREAL } ss.:

On this day of January, 1972, before me personally appeared ,
to me personally known, who, being by me duly sworn, says that he is a Vice-
President of CANADIAN NATIONAL RAILWAY COMPANY, that one of the seals
affixed to the foregoing instrument is the corporate seal of said corporation, that
said instrument was signed and sealed on behalf of said corporation by authority
of its Board of Directors and he acknowledged that the execution of the fore-
going instrument was the free act and deed of said corporation.

.....
Notary Public

My commission is for life.

[NOTARIAL SEAL]

SCHEDULE I

- Item 1: National Steel Car Corporation, Limited, a Canadian corporation.
- Item 2: For the purpose of making settlement, the Equipment shall be settled for in not more than two Groups of units of the Equipment
- Item 3: *Manufacturer's Warranty of Materials and Workmanship.* The Manufacturer warrants that the units of the Equipment will be built in accordance with the Specifications and with the other requirements, specifications and standards set forth or referred to in Article 1 of the Agreement and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Lessee and not manufactured by the Manufacturer) and workmanship or design (except as to designs specified by the Lessee and not developed or purported to be developed by the Manufacturer) under normal use and service; the Manufacturer's obligation under this paragraph being limited to making good at its plant any part or parts of any unit of the Equipment which shall be returned to the Manufacturer, with transportation charges prepaid, within one year after delivery of such unit and which the Manufacturer's examination shall disclose to its satisfaction to have been thus defective. **This warranty is expressly in lieu of all other warranties, expressed or implied, Statutory or otherwise, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Manufacturer, except for its obligations under Articles 1, 2, 3 and 6 of the Manufacturing Agreement.** The Manufacturer neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment, except as aforesaid.

The Manufacturer further agrees that neither the inspection as provided in Article 2 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 2, shall be deemed a waiver or modification by the Company, the Trustee and/or the Lessee of any of their rights under this Item 3.

It is further understood and agreed that the word "design(s)" as used herein and in Article 6 of the Agreement and the word "specialties" as used herein shall be deemed to include articles, materials, systems, formulae and processes.

- Item 4: Suite 1011, 1155 Dorchester Boulevard West, Montreal 102, Quebec, Canada.

Item 5: In the event that any lower base prices than those set forth in Schedule II to the Manufacturing Agreement are made by the Manufacturer on railroad equipment similar in type to any unit of the Equipment, the Manufacturer agrees to make a corresponding reduction in the base price of any such unit of the Equipment delivered pursuant to Article 2 of the Manufacturing Agreement on or after the date of said price reduction.

SCHEDULE II

Type	Manufacturer's Specifications	Manufacturer's Plant	Quantity	Lessee's Road Numbers (All Inclusive)	Unit Base Price	Total Base Price	Date and Place of Delivery
Tri-level cars	CN Specification F-140-1 dated May 1971, General Arrangement Drawing 9H-37476 and Specification SS-1966 and Letter of Manufacturer to Lessee dated June 11, 1971	Hamilton, Ontario	150	CN 700500 to 700649	\$31,196.61 (Canadian)	\$4,679,491.50 (Canadian)	Jan.-Apr., 1972 F.O.B. Manufacturer's Plant, Hamilton, Ontario

Lease of Equipment

between

THE CANADA TRUST COMPANY,
as Owner-Trustee

and

CANADIAN NATIONAL RAILWAY COMPANY

Dated as of December 31, 1971

LEASE OF EQUIPMENT, dated as of December 31, 1971, between THE CANADA TRUST COMPANY, a trust company incorporated under the laws of Canada, as Owner-Trustee (hereinafter called the Lessor) under a Trust Agreement dated as of December 31, 1971, with FIRST SECURITY BANK OF IDAHO, NATIONAL ASSOCIATION, and CANADIAN NATIONAL RAILWAY COMPANY, a corporation duly incorporated under the laws of Canada (hereinafter called the Lessee).

WHEREAS, the Lessor, National Steel Car Corporation, Limited (hereinafter called the Manufacturer) and the Lessee have entered into a Manufacturing Agreement dated as of December 31, 1971 (hereinafter called the Manufacturing Agreement), wherein the Manufacturer has agreed to construct, sell and deliver the railroad equipment described in Schedule I hereto; and

WHEREAS, the Lessor has entered into an Equipment Trust Agreement dated as of December 31, 1971 (hereinafter called the Equipment Trust Agreement) with Canada Permanent Trust Company, as Trustee (hereinafter called the Trustee), under which the Lessor has agreed to cause the Manufacturer to sell, assign and transfer to the Trustee title to all the Units and under which the Trustee has agreed to lease all the Units to the Lessor;

WHEREAS, the Lessee desires to lease from the Lessor all the Units, or such lesser number as are delivered and accepted and settled for under the Manufacturing Agreement on or prior to May 1, 1972 (hereinafter called the Units), at the rentals and for the terms and upon the conditions hereinafter provided;

Now, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee hereunder, subject and subordinate to all the rights and remedies of the Trustee under the Equipment Trust Agreement.

§ 1. *Delivery and Acceptance of Units.* The Lessor will cause each Unit accepted pursuant to the Manufacturing Agreement to be tendered to the Lessee at such point or points as may be mutually acceptable to the Lessor and the Lessee. Immediately upon such tender, the Lessee will cause its authorized inspectors or representatives to inspect the same, and if such Unit is found to be in good operating order and repair, to accept delivery of such Unit and to execute and deliver to the Lessor a certificate of acceptance (hereinafter called a Certificate of Acceptance) certifying as to the actual date or acceptance of delivery by the Lessee; whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee under this Lease and shall be subject thereafter to all the terms and conditions of this Lease and such Certificate of Acceptance shall be absolutely binding upon the Lessee. Any Unit or Units excluded from the Equipment Trust Agreement pursuant to Section 3.01 of the Equipment Trust Agreement shall likewise be excluded from this Lease.

§ 2. *Rentals.* The Lessee agrees to pay to the Lessor, in lawful money of Canada or of the United States of America, as hereinafter more specifically set forth, as rental for each unit subject to this Lease, eighty-two (82) consecutive quarterly payments payable on the Business Day (as defined in the Equipment Trust Agreement) next preceding January 1, April 1, July 1 and October 1 of each year, commencing April 1, 1972. The Lessee acknowledges and agrees that the rental payments payable hereunder shall be paid partly in lawful money of Canada and partly in lawful money of the United States of America. That portion of each rental payment payable in lawful money of Canada shall be an amount equal to the percentage of the Canadian Cost (as such term is defined below) of the Units subject to this Lease set forth under the heading "Percentage of Canadian Cost" in the schedule set out below. That portion of each rental payment payable in lawful money of the United States of America shall be an amount equal to the percentage of U.S. Cost (as such term is defined hereinbelow) of the Units subject to this Lease set forth under the heading "Percentage of U.S. Cost" in the schedule set out below. For purposes of this Lease, Canadian Cost shall mean the aggregate Cost (as such term is defined in the Equipment Trust Agreement) of the Units subject to this Lease expressed in Canadian dollars. For purposes of this Lease, U.S. Cost shall mean an amount equal to the aggregate cost in U.S. dollars to the Lessor of the Canadian dollars used to make the payments to the Manufacturer on each Closing date (as defined in the Manufacturing Agreement) contemplated by Section 3.03 of the Equipment Trust Agreement divided by .203568. The Lessor agrees that the Lessee's consent shall be obtained for any exchange, prior to the date of the above-mentioned payments to the Manufacturer (but not on the date of such payments), of United States dollars for Canadian dollars for the purpose of obtaining Canadian dollars to make said payments, and that any such exchange shall be made at the selling price quoted on the New York market of Canadian dollars for bank transfers in the United States for payment abroad.

Except as otherwise provided above, the rental payment payable under this Lease on each rental payment date on which such rental payment is due shall be the sum of the amounts determined by multiplying the Canadian Cost and U.S. Cost of the Units subject to this Lease on such date by the applicable percentages set forth opposite such date in the following schedule:

RENTAL		
Rental Payment Date No.	Percentage of Canadian Cost	Percentage of U.S. Cost
1	.018804636%	.004806464%
2	.018804636	.004806464
3	1.692418	.007582
4	1.692418	.007582
5	1.692418	.007582

<u>Rental Payment Date No.</u>	<u>Percentage of Canadian Cost</u>	<u>Percentage of U.S. Cost</u>
6	1.692418	.007582
7	1.692418%	.007582%
8	1.692418	.007582
9	1.692418	.007582
10	1.692418	.007582
11	1.692418	.007582
12	1.692418	.007582
13	1.692418	.007582
14	1.692418	.007582
15	1.692418	.007582
16	1.692418	.007582
17	1.692418	.007582
18	1.692418	.007582
19	1.692418	.007582
20	1.692418	.007582
21	1.692418	.007582
22	1.692418	.007582
23	1.692418	.007582
24	1.692418	.007582
25	1.692418	.007582
26	1.692418	.007582
27	1.692418	.007582
28	1.692418	.007582
29	1.692418	.007582
30	1.692418	.007582
31	1.692418	.970582
32	1.692418	.970582
33	1.692418	.970582
34	1.692418	.970582
35	2.662999	0
36	2.662999	0
37	2.662999	0
38	2.662999	0
39	2.662999	0
40	2.662999	0
41	2.662999	0
42	2.662999	0
43	2.662999	0
44	2.662999	0
45	2.662999	0
46	2.662999	0
47	2.662999	0
48	2.662999	0

<u>Rental Payment Date No.</u>	<u>Percentage of Canadian Cost</u>	<u>Percentage of U.S. Cost</u>
49	2.662999%	0%
50	2.662999	0
51	2.662999	0
52	2.662999	0
53	2.662999	0
54	2.662999	0
55	2.662999	0
56	2.662999	0
57	2.662999	0
58	2.662999	0
59	2.662999	0
60	2.662999	0
61	2.662999	0
62	2.662999	0
63	2.662999	0
64	2.662999	0
65	2.662999	0
66	2.662999	0
67	2.662999	0
68	2.662999	0
69	2.662999	0
70	2.662999	0
71	2.662999	0
72	2.662999	0
73	2.662999	0
74	2.662999	0
75	2.662999	0
76	2.662999	0
77	2.662999	0
78	2.662999	0
79	2.662999	0
80	2.662999	0
81	2.662999	0
82	2.662999	0

The first such quarterly rental payment shall be made in respect of the Units subject to this Lease which shall have been settled for on or prior to April 1, 1972 under the Manufacturing Agreement and the Equipment Trust Agreement and such payment shall be in an amount equal to the sum of the percentages of the Canadian Cost and U.S. Cost of each such Unit (as set forth in the schedule above) for each day elapsed from and including the date such Units are so settled for to and including April 1, 1972. The second such

quarterly rental payment, covering the period from April 2, 1972 to and including July 1, 1972, shall be in an amount equal to the sum of (x) the percentages of the Canadian Cost and U.S. Cost (as set forth in the schedule above) of the Units subject to this Lease which shall have been settled for on or before April 1, 1972, and (y) the percentages of the Canadian Cost and U.S. Cost (as set forth in the schedule above) of each such other Units subject to this Lease for each day elapsed from and including the date such Units are so settled for to and including July 1, 1972. The remaining quarterly rental payments in respect of each Unit subject to this Lease shall be in an amount equal to the sum of the percentages of the Canadian Cost of the U.S. Cost of such Units (as set forth in the schedule above).

All rental and other payments provided for in this Lease to be made to the Lessor shall be made to the Lessor by the deposit of the funds to the account of the Lessor at the branch of such bank or trust company as shall be from time to time specified in writing by the Lessor.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off against rent, including but not limited to, abatements, reductions or set-offs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or otherwise or against the Trustee; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use of or destruction of all or any of the Units from whatever cause, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any private person or entity, the invalidity or unenforceability or lack of due authorization of this Lease or lack of right, power or authority of the Lessor to enter into this Lease, the breach by the Lessor of the representations and warranties of the Lessor contained in the second paragraph of § 8 hereof, or by reason of any failure by the Lessor to perform any of its obligations herein contained, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. The Lessee shall have a right of action against the Lessor for any such breach of such representations and warranties or any such failure to perform such obligations, but without any right of set-off of such rents and other amounts payable by the Lessee hereunder.

§ 3. *Terms of Lease.* The term of this Lease as to each Unit shall begin upon acceptance thereof by the Lessee pursuant to § 1 hereof, and, subject to the provisions of §§ 1, 6, 9, 17 and 19 hereof, shall terminate on the date on which the final quarterly payment of rent in respect thereof is due hereunder.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, are subordinate, junior in rank and subject to the rights of the Trustee under the Equipment Trust Agreement.

§ 4. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the identifying number as set forth in Annex A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than one inch in height, the following words: "OWNED BY CANADA PERMANENT TRUST COMPANY, 320 BAY STREET, TORONTO, ONTARIO, CANADA, AS TRUSTEE UNDER THE TERMS OF AN EQUIPMENT TRUST AGREEMENT", or other appropriate words designated by the Trustee, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the interests of the Lessor and the Trustee in and to such Unit and the rights of the Lessor under this Lease and the Equipment Trust Agreement and of the Trustee under the Equipment Trust Agreement. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, defaced or destroyed. The Lessee will not change or permit the identifying number of any Unit to be changed except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Trustee and the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease will have been filed, recorded or deposited.

Except as above provided the Lessee will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Lessee may cause the Units to be lettered with the names, initials or other insignia customarily used by the Lessee or any permitted sublessee on railroad equipment used by it of the same or similar type for convenience of identification of their right to use the Units.

§ 5. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor and the Trustee for collection or other charges and will be free of expense to the Lessor and the Trustee with respect to the amount of any local, state, provincial or federal Canadian, United States or Mexican taxes (other than any local, state, provincial or federal Canadian, United States or Mexican income taxes [to the extent that the Lessor receives credit for such United States or Mexican taxes against its Canadian income tax liability] payable by the Lessor in consequence of the receipt of payments provided herein, and other than the aggregate of all franchise taxes measured by net income based on such receipts, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments or license fees (and any charges, fines or penalties of any kind in connection

Unit while subject to this Lease or until no longer in the possession of or stored by the Lessee whichever is later, and to indemnify and save harmless the Lessor and the Trustee against any charge, claim, expense, loss or liability on account of any accident in connection with the operation, use, condition, possession or storage of any Unit resulting in damage to property or injury or death to any person; provided, however, that the Lessee shall not be required to indemnify the Lessor or the Trustee under this paragraph for negligence on the part of the Lessor or the Trustee. The indemnities arising under this paragraph shall survive payment of all other obligations under this Lease or the termination of this Lease. Anything herein to the contrary notwithstanding, the Lessee shall not be obligated to indemnify under this paragraph in respect of any charge, claim, expense, loss or liability attributable to a Unit which shall have been returned to the Lessor pursuant to §§ 10 or 12 hereof or after this Lease with respect to such Unit has otherwise terminated, *provided* that such charge, claim, expense, loss or liability is attributable to an event occurring after such Unit was so returned or this Lease with respect to such Unit terminated, and *provided, further*, that such charge, claim, expense, loss or liability does not arise as a result of mechanical defects of such Unit which existed at the time such Unit was so returned or this Lease with respect to such Unit terminated.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of, and furnish a copy to, the Lessor) any and all reports known by the Lessee to be required to be filed by the Lessor, or requested by the Lessor to be filed, with any federal, state or other regulatory authority by reason of the interest of the Trustee and the Lessor in the Units or the leasing of the Units to the Lessee.

§ 9. *Default.* If, during the continuance of this Lease, one or more of the following events (hereinafter sometimes called Events of Default) shall occur:

A. default shall be made in the payment of any part of the rental provided in § 2 hereof and such default shall continue for 10 days; or

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease; or

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Consent (as hereinafter defined) and such default shall continue (and the Lessee shall not make effective provisions for curing such default) for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied; or

D. any proceedings shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganization, arrange-

ments, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such in effectiveness shall continue), and all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all right of the Lessee to the use of the Units shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have the right to recover from the Lessee any and all amounts which under the terms of this Lease may then be due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period), (i) as liquidated damages for loss of the bargain and not as a penalty, a sum with respect to each Unit subject to this Lease (save and except those excluded pursuant to § 6 thereof), which represents the excess of (x) the present value at the time of such termination of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the net rentals which the Lessor reasonably estimates to be obtainable for the lease of the Unit during such period, such present value to be computed in each case on a basis of 5% per annum discount compounded quarterly from the

respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental and (iii) an amount which, after deduction of all taxes required to be paid by the Beneficiary (as defined in §14 hereof) in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, shall be equal to such sum as, in the reasonable opinion of the Beneficiary, will cause the Beneficiary's net return under this Lease to be equal to the net return that would have been available to the Beneficiary if it had been entitled to utilization of all or such portion of depreciation deductions with respect to the Units computed in accordance with the method listed in Section 167(b) of the Internal Revenue Code of 1954 as amended to the date hereof most favorable to the Beneficiary, which was lost, not claimed, not available for claim or disallowed in respect of the termination of this Lease, the Lessor's loss of the right to use such Unit, any action or inaction by the Lessor or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default. Notwithstanding anything to the contrary contained in this clause (b), it is understood and agreed that the Lessee shall receive a credit in respect of the amounts payable pursuant to sub-clause (i) of this clause (b) equal to any net proceeds received by the Lessor upon the sale or the re-leasing of the Units.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies,

§ 10. *Return of Units Upon Default.* If this Lease shall terminate pursuant to § 9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

A. forthwith place such Units upon such storage tracks of the Lessee as the Lessor may reasonably designate,

B. permit the Lessor to store such Units on such tracks at the risk of the Lessee until the earlier of the date all such Units have been sold, leased or otherwise disposed of by the Lessor and the 270th day from the day the Lessee shall have placed the Units on such storage tracks, and

C. transport the same to any place on the tracks of the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 10, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Unit. In connection therewith the Lessee will supply the Lessor with such documents as the Lessor may reasonably request.

§ 11. *Assignment; Possession and Use.* This Lease and the rentals and other sums due hereunder shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder shall inure to the benefit of any beneficiary of the Lessor if the Lessor is a trust, *subject, however* to the terms of such trust, and to the Lessor's assigns (including any beneficiary of any such assignee if such assignee is a trust).

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them (except to the extent that the provisions of any mortgage

now or hereafter created on any of the lines of railroad of the Lessee may subject the Lessee's leasehold interest to the lien thereof). In addition, the Lessee, at its own expense, will promptly cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor or the Trustee not related to the ownership of the Units or to the extent that the provisions of any mortgage now or hereafter created on any of the lines of railroad of the Lessee may subject the Lessee's leasehold interest to the lien thereof) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interests of the Lessor, the Trustee or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph hereof.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use thereof by it or any affiliated corporation upon its lines of railroad or upon lines of railroad over which the Lessee has trackage or other operating rights or over which railroad equipment of the Lessee or any affiliated corporation is regularly operated pursuant to contract, and also to permit the use of the Units upon other railroads in the usual interchange of traffic (if such interchange is customary at the time), but only upon and subject to all the terms and conditions of this Lease and the Equipment Trust Agreement.

Nothing in this § 11 shall be deemed to restrict the right of the Lessee (i) to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation incorporated under the laws of Canada (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become amalgamated, merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety; or (ii) to sublease any Unit to any subsidiary or affiliated corporations of the Lessee; *provided, however*, that the rights of such sublessee are made expressly subordinate to the rights and remedies of the Trustee under the Equipment Trust Agreement and the Lessor under this Lease.

The Lessor shall have the right to declare the lease provided for herein terminated in case of any unauthorized assignment or transfer of the Lease.

§ 12. *Return of Units Upon Termination of Term.* As soon as practicable on or after the termination of the term of this Lease as to any or all of the Units, the Lessee will (unless the Units shall have suffered a Casualty Occurrence), at its own cost and expense, at the request of the Lessor, assemble such Units and deliver possession of such Units to the Lessor upon such storage tracks of the Lessee as the Lessor may reasonably designate and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport

the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as directed by the Lessor upon not less than 30 days' written notice to the Lessee; the movement and storage of the Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If any Unit shall have suffered a Casualty Occurrence, the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof. Each Unit returned to Lessor pursuant to this Section (other than a Unit which has suffered a Casualty Occurrence) shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted and (ii) meet the standards then in effect under the interchange rules of the Association of American Railroads if applicable and the Canadian Transport Commission.

§ 13. *Opinion of Counsel for the Lessee.* On each Closing Date as defined in the Manufacturing Agreement, the Lessee will deliver to the Lessor and the Trustee the written opinion of counsel for the Lessee, in such number of counterparts as may reasonably be requested, and addressed to the Lessor and the Trustee, in scope and substance satisfactory to them and their counsel, to the effect that:

A. the Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of Canada, with full corporate power to enter into this Lease, the consent and agreement executed by the Lessee (hereinafter called the Consent) to the assignment of this Lease to the Trustee as of the date hereof (hereinafter called the Assignment);

B. this Lease and the Consent have been duly authorized, executed and delivered by the Lessee and constitute valid, legal and binding agreements, enforceable in accordance with their terms;

C. upon deposit of the Equipment Trust Agreement, this Lease and the Assignment (including the Consent) in the office of the Registrar General of Canada and publication of notice of such deposit in the *Canada*

Unit while subject to this Lease or until no longer in the possession of or stored by the Lessee whichever is later, and to indemnify and save harmless the Lessor and the Trustee against any charge, claim, expense, loss or liability on account of any accident in connection with the operation, use, condition, possession or storage of any Unit resulting in damage to property or injury or death to any person; provided, however, that the Lessee shall not be required to indemnify the Lessor or the Trustee under this paragraph for negligence on the part of the Lessor or the Trustee. The indemnities arising under this paragraph shall survive payment of all other obligations under this Lease or the termination of this Lease. Anything herein to the contrary notwithstanding, the Lessee shall not be obligated to indemnify under this paragraph in respect of any charge, claim, expense, loss or liability attributable to a Unit which shall have been returned to the Lessor pursuant to §§ 10 or 12 hereof or after this Lease with respect to such Unit has otherwise terminated, *provided* that such charge, claim, expense, loss or liability is attributable to an event occurring after such Unit was so returned or this Lease with respect to such Unit terminated, and *provided, further*, that such charge, claim, expense, loss or liability does not arise as a result of mechanical defects of such Unit which existed at the time such Unit was so returned or this Lease with respect to such Unit terminated.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of, and furnish a copy to, the Lessor) any and all reports known by the Lessee to be required to be filed by the Lessor, or requested by the Lessor to be filed, with any federal, state or other regulatory authority by reason of the interest of the Trustee and the Lessor in the Units or the leasing of the Units to the Lessee.

§ 9. *Default.* If, during the continuance of this Lease, one or more of the following events (hereinafter sometimes called Events of Default) shall occur:

A. default shall be made in the payment of any part of the rental provided in § 2 hereof and such default shall continue for 10 days; or

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease; or

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Consent (as hereinafter defined) and such default shall continue (and the Lessee shall not make effective provisions for curing such default) for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied; or

D. any proceedings shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganization, arrange-

ments, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such in effectiveness shall continue), and all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all right of the Lessee to the use of the Units shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have the right to recover from the Lessee any and all amounts which under the terms of this Lease may then be due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period), (i) as liquidated damages for loss of the bargain and not as a penalty, a sum with respect to each Unit subject to this Lease (save and except those excluded pursuant to § 6 thereof), which represents the excess of (x) the present value at the time of such termination of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the net rentals which the Lessor reasonably estimates to be obtainable for the lease of the Unit during such period, such present value to be computed in each case on a basis of 5% per annum discount compounded quarterly from the

respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental and (iii) an amount which, after deduction of all taxes required to be paid by the Beneficiary (as defined in §14 hereof) in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, shall be equal to such sum as, in the reasonable opinion of the Beneficiary, will cause the Beneficiary's net return under this Lease to be equal to the net return that would have been available to the Beneficiary if it had been entitled to utilization of all or such portion of depreciation deductions with respect to the Units computed in accordance with the method listed in Section 167(b) of the Internal Revenue Code of 1954 as amended to the date hereof most favorable to the Beneficiary, which was lost, not claimed, not available for claim or disallowed in respect of the termination of this Lease, the Lessor's loss of the right to use such Unit, any action or inaction by the Lessor or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default. Notwithstanding anything to the contrary contained in this clause (b), it is understood and agreed that the Lessee shall receive a credit in respect of the amounts payable pursuant to sub-clause (i) of this clause (b) equal to any net proceeds received by the Lessor upon the sale or the re-leasing of the Units.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies,

§ 10. *Return of Units Upon Default.* If this Lease shall terminate pursuant to § 9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

A. forthwith place such Units upon such storage tracks of the Lessee as the Lessor may reasonably designate,

B. permit the Lessor to store such Units on such tracks at the risk of the Lessee until the earlier of the date all such Units have been sold, leased or otherwise disposed of by the Lessor and the 270th day from the day the Lessee shall have placed the Units on such storage tracks, and

C. transport the same to any place on the tracks of the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 10, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Unit. In connection therewith the Lessee will supply the Lessor with such documents as the Lessor may reasonably request.

§ 11. *Assignment; Possession and Use.* This Lease and the rentals and other sums due hereunder shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder shall inure to the benefit of any beneficiary of the Lessor if the Lessor is a trust, *subject, however* to the terms of such trust, and to the Lessor's assigns (including any beneficiary of any such assignee if such assignee is a trust).

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them (except to the extent that the provisions of any mortgage

now or hereafter created on any of the lines of railroad of the Lessee may subject the Lessee's leasehold interest to the lien thereof). In addition, the Lessee, at its own expense, will promptly cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor or the Trustee not related to the ownership of the Units or to the extent that the provisions of any mortgage now or hereafter created on any of the lines of railroad of the Lessee may subject the Lessee's leasehold interest to the lien thereof) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interests of the Lessor, the Trustee or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph hereof.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use thereof by it or any affiliated corporation upon its lines of railroad or upon lines of railroad over which the Lessee has trackage or other operating rights or over which railroad equipment of the Lessee or any affiliated corporation is regularly operated pursuant to contract, and also to permit the use of the Units upon other railroads in the usual interchange of traffic (if such interchange is customary at the time), but only upon and subject to all the terms and conditions of this Lease and the Equipment Trust Agreement.

Nothing in this § 11 shall be deemed to restrict the right of the Lessee (i) to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation incorporated under the laws of Canada (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become amalgamated, merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety; or (ii) to sublease any Unit to any subsidiary or affiliated corporations of the Lessee; *provided, however*, that the rights of such sublessee are made expressly subordinate to the rights and remedies of the Trustee under the Equipment Trust Agreement and the Lessor under this Lease.

The Lessor shall have the right to declare the lease provided for herein terminated in case of any unauthorized assignment or transfer of the Lease.

§ 12. *Return of Units Upon Termination of Term.* As soon as practicable on or after the termination of the term of this Lease as to any or all of the Units, the Lessee will (unless the Units shall have suffered a Casualty Occurrence), at its own cost and expense, at the request of the Lessor, assemble such Units and deliver possession of such Units to the Lessor upon such storage tracks of the Lessee as the Lessor may reasonably designate and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport

the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as directed by the Lessor upon not less than 30 days' written notice to the Lessee; the movement and storage of the Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If any Unit shall have suffered a Casualty Occurrence, the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof. Each Unit returned to Lessor pursuant to this Section (other than a Unit which has suffered a Casualty Occurrence) shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted and (ii) meet the standards then in effect under the interchange rules of the Association of American Railroads if applicable and the Canadian Transport Commission.

§ 13. *Opinion of Counsel for the Lessee.* On each Closing Date as defined in the Manufacturing Agreement, the Lessee will deliver to the Lessor and the Trustee the written opinion of counsel for the Lessee, in such number of counterparts as may reasonably be requested, and addressed to the Lessor and the Trustee, in scope and substance satisfactory to them and their counsel, to the effect that:

A. the Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of Canada, with full corporate power to enter into this Lease, the consent and agreement executed by the Lessee (hereinafter called the Consent) to the assignment of this Lease to the Trustee as of the date hereof (hereinafter called the Assignment);

B. this Lease and the Consent have been duly authorized, executed and delivered by the Lessee and constitute valid, legal and binding agreements, enforceable in accordance with their terms;

C. upon deposit of the Equipment Trust Agreement, this Lease and the Assignment (including the Consent) in the office of the Registrar General of Canada and publication of notice of such deposit in the *Canada*

ment in trust for the Trustee and to turn them over to the Trustee forthwith in the same form in which they are received for application in accordance with the terms and conditions hereof.

(b) At the Company's sole cost and expense (except as otherwise provided herein or by any of the instruments or agreements referred to herein or in the Equipment Trust Agreement), to (i) appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the Lease or the obligations, duties or liabilities of the Company and the Lessee thereunder and (ii) pay all costs and expenses of the Trustee, including attorneys' fees in a reasonable sum, in any action or proceeding pertaining thereto in which the Trustee may appear.

(c) That should the Company fail to make any payment or to do any act as herein provided, then the Trustee, but without obligation so to do and without notice to or demand on the Company and without releasing the Company from any obligation hereunder, may make or do the same in such manner and to such extent as the Trustee may deem necessary to protect the security hereof, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Trustee, and also the right to perform and discharge each and every obligation, covenant and agreement of the Company contained in the Lease; and in exercising any such powers to pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees.

(d) To pay immediately upon demand, all sums expended by the Trustee under the authority hereof, together with interest thereon at the rate of $8\frac{1}{2}\%$ per annum.

4. The Company does hereby constitute the Trustee the Company's true and lawful attorney, irrevocably, with full power (in the name of the Company, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Company is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any cheques or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Trustee may deem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Company's obligations under the Equipment Trust Agreement, the assignment made hereby and all rights herein assigned to the Trustee shall terminate, and all estate, right, title and interest of the Trustee in and to the Lease and the Payments shall revert to the Company.

6. The Company represents and warrants that (a) the execution and delivery by the Company of the Lease, this Assignment and the Equipment Trust Agreement have each been duly authorized, and the Lease, this Assignment and the Equipment Trust Agreement are and will remain the valid and binding obligations of the Company in accordance with their terms; (b) the Company has not executed any other assignment of the Lease and the Trustee's right to receive all payments under the Lease is and will continue to be free and clear of any and all liens, agreements, security interests or other encumbrances prior to or *pari passu* with the interests of the Trustee, (c) notwithstanding this Assignment, the Company will conform and comply with each and all of the covenants and conditions in the Lease and the Equipment Trust Agreement set forth to be complied with by it, (d) to the knowledge of the Company, it has performed all obligations on its part to be performed under the Lease and the Equipment Trust Agreement on or prior to the date hereof and (e) the Lease and the Equipment Trust Agreement are in full force and effect and have not been canceled and to the knowledge of the Company there has not occurred on or prior to the date hereof any Event of Default (as that term is defined in the Equipment Trust Agreement) or any event which with notice and/or lapse of time constitute such an Event of Default.

If an Event of Default (as defined in the Equipment Trust Agreement) shall occur and be continuing, the Trustee shall be entitled (i) to exercise all the rights, privileges and remedies available to the Lessor under the Lease and to the Trustee under the Equipment Trust Agreement and (ii) to do any acts which the Trustee deems proper to protect the security hereof, either with or without taking possession of the Units. The taking possession of the Units and the taking of any action permitted as aforesaid shall not cure or waive any default or waive, modify or affect any default hereunder or under the Lease or the Equipment Trust Agreement, or invalidate any act done hereunder.

7. The Company covenants and agrees with the Trustee that in any suit, proceeding or action brought by the Trustee under the Lease for any instalment of, or interest on, any rental or other sum owing thereunder, or to enforce any provisions of the Lease, the Company will save, indemnify and keep the Trustee harmless from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Lessee or its successors, arising out of a breach by the Company of any obligation under the Lease or arising out of any other indebtedness or liability at any time owing to the Lessee or its successors from the Company. Any and all such obligations of the Company shall be and remain enforceable against and only against the Company and shall not be enforceable against the Trustee or any party or parties in whom any of the rights of the Company under the Lease shall vest by reason of the successive assignments or transfers.

8. The Company will from time to time execute all such financing statements and supplemental instruments and documents as the Trustee may from time to time reasonably request in order to confirm or further assure the assignment made hereby and the provisions hereof.

9. The Trustee may assign to any successor trustee appointed pursuant to Section 8.06 of the Equipment Trust Agreement or any co-trustee or separate trustee appointed pursuant to Section 8.09 thereof all or any of its rights under the Lease, including the right to receive any payments due or to become due to it from the Lessee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all obligations of the Trustee hereunder.

10. The Company agrees that it will not, without the prior written consent of the Trustee, enter into any agreement amending, modifying or terminating the Lease and that any amendment, modification or termination thereof without such consent shall be void.

11. This Assignment shall be governed by the laws of the Province of Ontario, Canada, *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act of the United States, the applicable recording laws of Canada and such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof or out of the markings on the Units as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited or in which any Unit may be located.

12. The Company shall cause copies of all notices received in connection with the Lease to be promptly delivered to the Trustee at 320 Bay Street, Toronto, Ontario, Canada, or at such other address as the Trustee shall designate.

13. Any provision of this Assignment which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Company hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

IN WITNESS WHEREOF, the Company has caused this instrument to be signed by an officer thereunto duly authorized, as of the date first above written.

THE CANADA TRUST COMPANY,
as Owner-Trustee,

[CORPORATE SEAL]

by

Authorized Officer |

Attest:

Authorized Officer |

Accepted:

CANADA PERMANENT TRUST COMPANY,
as Trustee.

by.....

Vice-President

On this day of January 1972, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CANADA TRUST COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[NOTARIAL SEAL]

LESSEE'S CONSENT AND AGREEMENT

The undersigned, a corporation duly incorporated under the laws of Canada, the Lessee named in the Lease (hereinafter called the Lease) referred to in the foregoing Assignment of Lease and Agreement (hereinafter called the Assignment), hereby (a) acknowledges receipt of a copy of the Assignment and (b) consents to all the terms and conditions of the Assignment.

As an inducement to the purchasers of the equipment trust certificates to be issued pursuant to the Equipment Trust Agreement (hereinafter called the Equipment Trust Agreement) dated as of December 31, 1971, between Canada Permanent Trust Company, as Trustee (hereinafter called the Trustee) and The Canada Trust Company, as Owner-Trustee (hereinafter called the Lessor), (a copy of which has been delivered to the undersigned) pursuant to which the Lessor is partially financing the purchase of the units of railroad equipment (hereinafter called the Units) being leased by the Lessor to the undersigned pursuant to the Lease, and in consideration of other good and valuable consideration, the undersigned agrees that:

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease (which moneys are hereinafter called the Payments) due and to become due under the Lease in respect of the Units leased thereunder, directly to the Trustee, at 320 Bay Street, Toronto, Ontario, Canada (or at such other address as may be furnished in writing to the undersigned by the Trustee); and, if the undersigned fails for any reason whatsoever to pay to the Trustee any Payments, it will pay to the Trustee, on the respective dates and times set forth in the Lease on which the Payments are specified to be due thereunder, sums equivalent to the Payments which the undersigned shall not theretofore have paid to the Trustee; it being hereby agreed that the undersigned's obligation to pay all the aforesaid Payments or sums equivalent to the Payments is absolute and unconditional;

(2) the Trustee shall be entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by the undersigned under the Lease as though the Trustee were named therein as the Lessor;

(3) the Payments or sums equivalent to the payments due hereunder shall not be subject to any right of setoff or counterclaim or other defense which the undersigned might have against the Lessor or otherwise, and the payment thereof to the Trustee shall be final and shall not be subject to, and the undersigned hereby agrees to indemnify the Trustee

against, any liens, charges or claims of any nature whatsoever (other than liens, charges or claims created or incurred by the Trustee not arising out of the transactions contemplated by the Equipment Trust Agreement, the Lease or the Assignment) resulting from a breach by the undersigned of its obligations under the Lease, prior to or *pari passu* with the right of the Trustee to apply such Payments or sums equivalent thereto, as provided in the Assignment;

(4) the Trustee shall not, by virtue of the Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise;

(5) the Lease shall not, without the prior written consent of the Trustee, be amended, terminated or modified, or any action be taken or omitted by the undersigned, the taking or omission of which might result in an alteration or impairment of the Lease, the Assignment or this Consent and Agreement or of any of the rights created by any thereof; and

(6) it will (i) execute, deliver and/or furnish all notices, certificates, communications, instruments, agreements, legal opinions and other documents and papers required to be executed, delivered and/or furnished by it (or its counsel) pursuant to the provisions of the Purchase Agreement (as defined in the Equipment Trust Agreement), the Assignment and/or the Equipment Trust Agreement and (ii) do all such acts and execute and deliver all such further assurances required to be done and/or executed and delivered by it pursuant to the provisions of any thereof.

In consideration of the premises, the Lessee's covenants aforementioned and other good and valuable consideration, the Trustee agrees to pay to the Lessee in accordance with Section 8.04 of the Equipment Trust Agreement any interest (in excess of accrued interest paid from Deposited Cash at the time of purchase) or other profit which may be realized from any sale or redemption of Investments (as defined in the Equipment Trust Agreement) on May 1, 1972 or on such earlier date as may be agreed upon by the Trustee and the Lessor, provided that the Lessor is not in default under the Equipment Trust Agreement and the Lessee is not in default under the Lease.

This Consent and Agreement, when accepted by the Trustee by signing the acceptance at the foot hereof, shall be deemed to be a contract under the

laws of the Province of Ontario and, for all purposes, shall be construed in accordance with the laws of said Province.

Dated as of December 31, 1971.

CANADIAN NATIONAL RAILWAY
COMPANY,

Approved
as to form only

Attorney

by.....
Vice-President

[CORPORATE SEAL]

Attest:

Deputy Secretary

Accepted:

CANADA PERMANENT TRUST COMPANY
as Trustee,

by.....
Vice-President

Notary Public

[NOTARIAL SEAL]

ANNEX C

ASSIGNMENT OF LEASE AND AGREEMENT dated as of December 31, 1971, by and between THE CANADA TRUST COMPANY, a trust company incorporated under the laws of Canada, as Owner-Trustee (hereinafter called the Company) under a Trust Agreement dated as of December 31, 1971 with First Security Bank of Idaho, National Association, and Canada Permanent Trust Company, as Trustee (hereinafter called the Trustee), under an Equipment Trust Agreement dated as of December 31, 1971 (hereinafter called the Equipment Trust Agreement), between the Trustee and the Company.

WHEREAS the Company, as Lessor, and Canadian National Railway Company, as Lessee (hereinafter called the Lessee), have entered into a Lease (as defined in the Equipment Trust Agreement), providing for the leasing by the Company to the Lessee of the Units (as defined in the Lease); and

WHEREAS, in order to provide security for the obligations of the Company under the Equipment Trust Agreement and as an inducement to the purchasers of the equipment trust certificates to be issued under the Equipment Trust Agreement to purchase said certificates, the Company has agreed to assign for security purposes its rights in, to and under the Lease to the Trustee;

Now, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed the parties hereto agree as follows:

1. As security for the payment and performance of its obligations under the Equipment Trust Agreement, the Company hereby assigns, transfers, and sets over unto the Trustee all the Company's right, title and interest as Lessor under the Lease, together with all rights, powers, privileges, and other benefits of the Company as Lessor under the Lease including without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Company from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages or otherwise (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Company, as Lessor, is or may become entitled to do under the Lease.

The Company agrees to cause all the Payments to be made directly to the Trustee at 320 Bay Street, Toronto, Ontario, Canada. The Trustee will accept all Payments and all other payments pursuant to this Assignment and will apply the same as follows: *first*, to or toward the payment of all amounts then due and payable or which shall become due and payable on the next succeeding January 1, April 1, July 1 or October 1, as the case may be, under the Equipment Trust Agreement and the Trustee shall credit such Payments and such payments pursuant to this Assignment so applied to the amounts so due and payable or so to become due and payable on the next succeeding January 1,

April 1, July 1 or October 1, as the case may be, by the Company under the Equipment Trust Agreement; and *second*, so long as, to the actual knowledge of the Trustee, no Event of Default (as defined in the Equipment Trust Agreement) or event known to the Trustee which, with notice or lapse of time or both, would constitute an Event of Default shall have occurred and then be continuing, any balance of such Payments and such payments pursuant to this Assignment remaining shall be paid over to the Company by the Trustee. So long as, to the actual knowledge of the Trustee, an Event of Default or event which with notice or lapse of time or both, would constitute an Event of Default shall then be continuing, the Trustee shall not pay over any of the Payments or such payments pursuant to this Assignment, but, during such continuance, shall apply all Payments and all such payments pursuant to this Assignment in a manner consistent with the provisions of the Equipment Trust Agreement. Anything in this Agreement to the contrary notwithstanding, no amounts shall be considered to be due and payable by the Company under the Equipment Trust Agreement in the event that such amounts shall have been paid by the Lessee to the Trustee pursuant to the Lease, the Equipment Trust Agreement, this Assignment and/or the Lessee's Consent and Agreement annexed hereto.

2. The assignment made hereby is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Trustee to, or transfer, or pass, or in any way affect or modify any liability of the Company under the Lease, it being understood and agreed that notwithstanding such assignment or any subsequent assignment all obligations of the Company to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Company or persons other than the Trustee.

3. To protect the security afforded by this Assignment the Company agrees as follows:

(a) Faithfully to abide by, perform and discharge each and every obligation, covenant and agreement of the Lease by the Company to be performed; at the sole cost and expense of the Company (except as otherwise provided herein or by any of the instruments or agreements referred to herein or in the Equipment Trust Agreement), to enforce or secure the performance of each and every obligation, covenant, condition and agreement contained in the Lease by the Lessee to be performed; without the written consent of the Trustee not to anticipate the rents under the Lease or to waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein; to hold any Payments received by the Company which are assigned and set over to the Trustee by this Assign-

ment in trust for the Trustee and to turn them over to the Trustee forthwith in the same form in which they are received for application in accordance with the terms and conditions hereof.

(b) At the Company's sole cost and expense (except as otherwise provided herein or by any of the instruments or agreements referred to herein or in the Equipment Trust Agreement), to (i) appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the Lease or the obligations, duties or liabilities of the Company and the Lessee thereunder and (ii) pay all costs and expenses of the Trustee, including attorneys' fees in a reasonable sum, in any action or proceeding pertaining thereto in which the Trustee may appear.

(c) That should the Company fail to make any payment or to do any act as herein provided, then the Trustee, but without obligation so to do and without notice to or demand on the Company and without releasing the Company from any obligation hereunder, may make or do the same in such manner and to such extent as the Trustee may deem necessary to protect the security hereof, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Trustee, and also the right to perform and discharge each and every obligation, covenant and agreement of the Company contained in the Lease; and in exercising any such powers to pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees.

(d) To pay immediately upon demand, all sums expended by the Trustee under the authority hereof, together with interest thereon at the rate of $8\frac{1}{2}\%$ per annum.

4. The Company does hereby constitute the Trustee the Company's true and lawful attorney, irrevocably, with full power (in the name of the Company, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Company is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any cheques or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Trustee may deem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Company's obligations under the Equipment Trust Agreement, the assignment made hereby and all rights herein assigned to the Trustee shall terminate, and all estate, right, title and interest of the Trustee in and to the Lease and the Payments shall revert to the Company.

6. The Company represents and warrants that (a) the execution and delivery by the Company of the Lease, this Assignment and the Equipment Trust Agreement have each been duly authorized, and the Lease, this Assignment and the Equipment Trust Agreement are and will remain the valid and binding obligations of the Company in accordance with their terms; (b) the Company has not executed any other assignment of the Lease and the Trustee's right to receive all payments under the Lease is and will continue to be free and clear of any and all liens, agreements, security interests or other encumbrances prior to or *pari passu* with the interests of the Trustee, (c) notwithstanding this Assignment, the Company will conform and comply with each and all of the covenants and conditions in the Lease and the Equipment Trust Agreement set forth to be complied with by it, (d) to the knowledge of the Company, it has performed all obligations on its part to be performed under the Lease and the Equipment Trust Agreement on or prior to the date hereof and (e) the Lease and the Equipment Trust Agreement are in full force and effect and have not been canceled and to the knowledge of the Company there has not occurred on or prior to the date hereof any Event of Default (as that term is defined in the Equipment Trust Agreement) or any event which with notice and/or lapse of time constitute such an Event of Default.

If an Event of Default (as defined in the Equipment Trust Agreement) shall occur and be continuing, the Trustee shall be entitled (i) to exercise all the rights, privileges and remedies available to the Lessor under the Lease and to the Trustee under the Equipment Trust Agreement and (ii) to do any acts which the Trustee deems proper to protect the security hereof, either with or without taking possession of the Units. The taking possession of the Units and the taking of any action permitted as aforesaid shall not cure or waive any default or waive, modify or affect any default hereunder or under the Lease or the Equipment Trust Agreement, or invalidate any act done hereunder.

7. The Company covenants and agrees with the Trustee that in any suit, proceeding or action brought by the Trustee under the Lease for any instalment of, or interest on, any rental or other sum owing thereunder, or to enforce any provisions of the Lease, the Company will save, indemnify and keep the Trustee harmless from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Lessee or its successors, arising out of a breach by the Company of any obligation under the Lease or arising out of any other indebtedness or liability at any time owing to the Lessee or its successors from the Company. Any and all such obligations of the Company shall be and remain enforceable against and only against the Company and shall not be enforceable against the Trustee or any party or parties in whom any of the rights of the Company under the Lease shall vest by reason of the successive assignments or transfers.

8. The Company will from time to time execute all such financing statements and supplemental instruments and documents as the Trustee may from time to time reasonably request in order to confirm or further assure the assignment made hereby and the provisions hereof.

9. The Trustee may assign to any successor trustee appointed pursuant to Section 8.06 of the Equipment Trust Agreement or any co-trustee or separate trustee appointed pursuant to Section 8.09 thereof all or any of its rights under the Lease, including the right to receive any payments due or to become due to it from the Lessee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all obligations of the Trustee hereunder.

10. The Company agrees that it will not, without the prior written consent of the Trustee, enter into any agreement amending, modifying or terminating the Lease and that any amendment, modification or termination thereof without such consent shall be void.

11. This Assignment shall be governed by the laws of the Province of Ontario, Canada, *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act of the United States, the applicable recording laws of Canada and such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof or out of the markings on the Units as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited or in which any Unit may be located.

12. The Company shall cause copies of all notices received in connection with the Lease to be promptly delivered to the Trustee at 320 Bay Street, Toronto, Ontario, Canada, or at such other address as the Trustee shall designate.

13. Any provision of this Assignment which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Company hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

IN WITNESS WHEREOF, the Company has caused this instrument to be signed by an officer thereunto duly authorized, as of the date first above written.

THE CANADA TRUST COMPANY,
as Owner-Trustee,

[CORPORATE SEAL]

by

Authorized Officer |

Attest:

Authorized Officer |

Accepted:

CANADA PERMANENT TRUST COMPANY,
as Trustee.

by.....

Vice-President

On this day of January 1972, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CANADA TRUST COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[NOTARIAL SEAL]

LESSEE'S CONSENT AND AGREEMENT

The undersigned, a corporation duly incorporated under the laws of Canada, the Lessee named in the Lease (hereinafter called the Lease) referred to in the foregoing Assignment of Lease and Agreement (hereinafter called the Assignment), hereby (a) acknowledges receipt of a copy of the Assignment and (b) consents to all the terms and conditions of the Assignment.

As an inducement to the purchasers of the equipment trust certificates to be issued pursuant to the Equipment Trust Agreement (hereinafter called the Equipment Trust Agreement) dated as of December 31, 1971, between Canada Permanent Trust Company, as Trustee (hereinafter called the Trustee) and The Canada Trust Company, as Owner-Trustee (hereinafter called the Lessor), (a copy of which has been delivered to the undersigned) pursuant to which the Lessor is partially financing the purchase of the units of railroad equipment (hereinafter called the Units) being leased by the Lessor to the undersigned pursuant to the Lease, and in consideration of other good and valuable consideration, the undersigned agrees that:

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease (which moneys are hereinafter called the Payments) due and to become due under the Lease in respect of the Units leased thereunder, directly to the Trustee, at 320 Bay Street, Toronto, Ontario, Canada (or at such other address as may be furnished in writing to the undersigned by the Trustee); and, if the undersigned fails for any reason whatsoever to pay to the Trustee any Payments, it will pay to the Trustee, on the respective dates and times set forth in the Lease on which the Payments are specified to be due thereunder, sums equivalent to the Payments which the undersigned shall not theretofore have paid to the Trustee; it being hereby agreed that the undersigned's obligation to pay all the aforesaid Payments or sums equivalent to the Payments is absolute and unconditional;

(2) the Trustee shall be entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by the undersigned under the Lease as though the Trustee were named therein as the Lessor;

(3) the Payments or sums equivalent to the payments due hereunder shall not be subject to any right of setoff or counterclaim or other defense which the undersigned might have against the Lessor or otherwise, and the payment thereof to the Trustee shall be final and shall not be subject to, and the undersigned hereby agrees to indemnify the Trustee

against, any liens, charges or claims of any nature whatsoever (other than liens, charges or claims created or incurred by the Trustee not arising out of the transactions contemplated by the Equipment Trust Agreement, the Lease or the Assignment) resulting from a breach by the undersigned of its obligations under the Lease, prior to or *pari passu* with the right of the Trustee to apply such Payments or sums equivalent thereto, as provided in the Assignment;

(4) the Trustee shall not, by virtue of the Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise;

(5) the Lease shall not, without the prior written consent of the Trustee, be amended, terminated or modified, or any action be taken or omitted by the undersigned, the taking or omission of which might result in an alteration or impairment of the Lease, the Assignment or this Consent and Agreement or of any of the rights created by any thereof; and

(6) it will (i) execute, deliver and/or furnish all notices, certificates, communications, instruments, agreements, legal opinions and other documents and papers required to be executed, delivered and/or furnished by it (or its counsel) pursuant to the provisions of the Purchase Agreement (as defined in the Equipment Trust Agreement), the Assignment and/or the Equipment Trust Agreement and (ii) do all such acts and execute and deliver all such further assurances required to be done and/or executed and delivered by it pursuant to the provisions of any thereof.

In consideration of the premises, the Lessee's covenants aforementioned and other good and valuable consideration, the Trustee agrees to pay to the Lessee in accordance with Section 8.04 of the Equipment Trust Agreement any interest (in excess of accrued interest paid from Deposited Cash at the time of purchase) or other profit which may be realized from any sale or redemption of Investments (as defined in the Equipment Trust Agreement) on May 1, 1972 or on such earlier date as may be agreed upon by the Trustee and the Lessor, provided that the Lessor is not in default under the Equipment Trust Agreement and the Lessee is not in default under the Lease.

This Consent and Agreement, when accepted by the Trustee by signing the acceptance at the foot hereof, shall be deemed to be a contract under the

laws of the Province of Ontario and, for all purposes, shall be construed in accordance with the laws of said Province.

Dated as of December 31, 1971.

CANADIAN NATIONAL RAILWAY
COMPANY,

Approved
as to form only

Attorney

by.....
Vice-President

[CORPORATE SEAL]

Attest:

Deputy Secretary

Accepted:

CANADA PERMANENT TRUST COMPANY
as Trustee,

by.....
Vice-President

Notary Public

[NOTARIAL SEAL]